

SEVENTY-NINTH DAY
(Wednesday, May 27, 1981)

The Senate met at 10:00 o'clock a.m., pursuant to adjournment and was called to order by the President.

The roll was called and the following Senators were present: Andujar, Blake, Brooks, Brown, Caperton, Doggett, Farabee, Glasgow, Harris, Howard, Jones, Kothmann, Leedom, Mauzy, McKnight, Meier, Mengden, Ogg, Parker, Richards, Santiesteban, Sarpalius, Short, Snelson, Traeger, Travis, Truan, Uribe, Vale, Williams, Wilson.

A quorum was announced present.

Senator Bob Glasgow offered the invocation as follows:

Our most Holy Lord God, the giver of all good gifts and graces and the supreme architect of this our universe, Thou has said that when two or three gather together in Thy Name, Thou shall be in the midst of them. We pray that You are in our midst today, and counsel us to listen to Thy Holy Word, give us the wisdom to walk in Thy continent, and follow Thy Holy Word. Amen.

On motion of Senator Mauzy and by unanimous consent, the reading of the Journal of the proceedings of yesterday was dispensed with and the Journal was approved.

REPORTS OF STANDING COMMITTEES

Senator Traeger submitted the following report for the Committee on Intergovernmental Relations:

H.B. 450
H.J.R. 119 (Amended)
H.B. 1785
S.B. 1232
H.B. 778
H.B. 344
H.B. 2083
H.B. 1328
H.B. 2312
H.B. 2353
H.B. 2304
H.B. 1561
H.B. 1073
H.B. 2100
H.B. 1895
H.B. 1374 (Amended)
H.B. 2337
H.B. 2144
H.B. 2174
H.B. 13
H.B. 1814
H.B. 272
H.B. 273 (Amended)
H.B. 1971
H.B. 1928
C.S.H.B. 618 (Read first time)
H.B. 2368 (Amended)
C.S.H.B. 958 (Read first time)

Senator Snelson submitted the following report for the Committee on Education:

H.B. 1586 (Amended)
H.B. 389
H.B. 28
H.B. 1989 (Amended)
H.B. 1015
H.B. 1752
H.B. 307
H.B. 339
H.B. 1091 (Amended)
H.B. 510 (Amended)
H.C.R. 125

Senator McKnight submitted the following report for the Subcommittee on Nominations:

We, your Subcommittee on Nominations, to which were referred the following appointments, have had same under consideration, and beg to report them back to the Senate for final consideration.

To be a Member of the BOARD OF DIRECTORS - TRINITY RIVER AUTHORITY OF TEXAS: Tommy W. Hollis, San Jacinto County.

To be COMMISSIONER OF THE PUBLIC UTILITY COMMISSION OF TEXAS: Dr. Henry Moak Rollins, Travis County.

To be a Member of the LOWER COLORADO RIVER AUTHORITY: John W. Hancock, Sr., Wharton County.

To be a Member of the TEXAS BOARD OF CORRECTIONS: Pete V. Cortez, Bexar County.

To be a Member of the TEXAS BOARD OF HEALTH: Dr. Frank Bryant, Jr., Bexar County.

To be Members of the BOARD OF REGENTS - STEPHEN F. AUSTIN STATE UNIVERSITY: William Fletcher Garner, Jr., Orange County; David Larry Jackson, Collin County.

To be a Member of the TEXAS BOARD OF MENTAL HEALTH AND MENTAL RETARDATION: Roger Bateman, Nueces County.

To be Members of the TEXAS YOUTH COUNCIL: James Smith Bowie, Harris County; Dr. George Willeford, Travis County.

To be a Member of the TEXAS REAL ESTATE COMMISSION: Dr. Richard Arthur Box, Travis County.

To be a Member of the TEXAS BOARD OF LICENSURE FOR NURSING HOME ADMINISTRATORS: Mrs. John E. (Ann) Watson, Harris County.

To be Members of the BOARD OF DIRECTORS: - TEXAS HOUSING AGENCY: Salvadore Canchola, El Paso County; Ray P. Moudy, Midland County; Doyle Stuckey, Harris County.

To be Members of the PILOT COMMISSION - PORT OF GALVESTON AND TEXAS CITY: A. O. Evans, Galveston County; Edward Jordan Fox, Galveston County; Ed Mabry, Galveston County; Edward Eugene Minocchi, Galveston County; William B. Patton, Galveston County.

To be a Member of the BOARD OF DIRECTORS - NUECES RIVER AUTHORITY: Gus T. Canales, Jim Wells County.

To be BRANCH PILOTS FOR THE SABINE BAR, PASS AND TRIBUTARIES: Capt. R. E. Respass, Jefferson County; Capt. David A. Wood, Jefferson County.

To be a Member of the ADVISORY COUNCIL FOR TECHNICAL-VOCATIONAL EDUCATION IN TEXAS: Mrs. Donna Price, Harris County.

To be a Member of the BOARD OF REGENTS - STEPHEN F. AUSTIN STATE UNIVERSITY: Homer Lee Bryce, Rusk County.

To be a Member of the BOARD OF REGENTS - TEXAS WOMAN'S UNIVERSITY: Mrs. Frances H. Chiles, Tarrant County.

To be a Member of the TEXAS BOARD OF LICENSURE FOR NURSING HOME ADMINISTRATORS: Mrs. Lilla Odell (Dell) Hagan, Smith County.

To be a Member of the BOARD OF TRUSTEES - MUNICIPAL RETIREMENT SYSTEM: Clyde McCollough, Jr., Bexar County.

To be a Member of the BOARD OF DIRECTORS - GUADALUPE-BLANCO RIVER AUTHORITY: A. C. Schwethelm, Kendall County.

To be a Member of the COMMISSION ON JAIL STANDARDS: James D. Goode, Tom Green County.

To be Members of the STATE BOARD OF DENTAL EXAMINERS: Dr. Brian Babin, Tyler County; Dr. Jack T. Clark, Tarrant County; Dr. Will F. Graham, Hutchison County.

To be Members of the STATE BOARD OF MEDICAL EXAMINERS: Dr. Clifford D. Burross, Wichita County; Dr. Michael A. Calabrese, El Paso County; Dr. Jesse D. Ibarra, Jr., Bell County; Dr. Joel David Holliday, Dallas County.

HOUSE BILLS ON FIRST READING

The following bills received from the House were read the first time and referred to the Committee indicated:

H.B. 1463, To Committee on State Affairs.

H.B. 1791, To Committee on Finance.

H.B. 1995, To Committee on Economic Development.

SENATE RESOLUTION 757

Senator Jones offered the following resolution:

S.R. 757, Commending Harry Provence, former Chairman of the Coordinating Board, Texas College and University System, for his service and contributions to the system of higher education in Texas.

The resolution was read and was adopted.

GUESTS PRESENTED

Senator Jones escorted Mrs. Eugenia Provence Gomez, Mr. Provence's daughter, and grandchildren, Gregg McCown and Leslie Provence Jones, to the President's Rostrum.

In Mr. Provence's absence, the President presented an enrolled copy of Senate Resolution 757 to Mrs. Gomez.

SENATE RESOLUTION 725

Senator Brooks offered the following resolution:

S.R. 725, In memory of Hubert Roussel, longtime music and drama critic for the Houston Post.

The resolution was read.

On motion of Senator Ogg and by unanimous consent, the names of the Lieutenant Governor and Senators were added to the resolution as signers thereof.

On motion of Senator Brooks and by unanimous consent, the resolution was considered immediately and was adopted by a rising vote of the Senate.

GUEST PRESENTED

Senator Brooks escorted Mr. Roussel's great-grandson, Peter, to the President's Rostrum.

The President presented an enrolled copy of Senate Resolution 725 to Mr. Roussel.

SENATE RESOLUTION 751

Senator Doggett offered the following resolution:

S.R. 751, Commending the Board of Trustees of the Austin Chapter of the Sudden Infant Death Syndrome Foundation for the initiative and concern which motivated their founding this organization.

The resolution was read and was adopted.

GUESTS PRESENTED

Senator Doggett presented Mr. and Mrs. Raymond Lee Walker and members of the Austin Chapter of the National Sudden Infant Death Syndrome Foundation.

The President presented an enrolled copy of Senate Resolution 751 to Mr. and Mrs. Walker.

**CONFERENCE COMMITTEE REPORT
HOUSE BILL 2333**

Senator Wilson submitted the following Conference Committee Report:

Austin, Texas
May 26, 1981

Honorable William P. Hobby
President of the Senate

Honorable Bill Clayton
Speaker of the House of Representatives

Sir:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on H.B. 2333 have met and had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

WILSON
BLAKE
TRAEGER
HARRIS
JONES
On the part of the Senate

SCHLUETER
PEVETO
SHARP
TURNER
On the part of the House

The Conference Committee Report was read and was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT
SENATE BILL 766**

Senator Ogg submitted the following Conference Committee Report:

Austin, Texas
May 26, 1981

Honorable William P. Hobby
President of the Senate

Honorable Bill Clayton
Speaker of the House of Representatives

Sir:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on S.B. 766 have met and had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

OGG
SARPALIUS
GLASGOW
BROOKS
SANTIESTEBAN
On the part of the Senate

NABERS
BROOKSHIRE
CRAWFORD
PEVETO
On the part of the House

**CONFERENCE COMMITTEE REPORT
SENATE BILL 766**

**A BILL TO BE ENTITLED
AN ACT**

relating to the incorporation, regulation, administration, funding, and dissolution of nonprofit health facilities development corporations created by cities, counties, and hospital districts for the public purpose of promoting and developing new, expanded, and improved health-care and health-care-related facilities necessary for health care, research, and education; prescribing the duties, powers, and privileges of the corporations and their sponsoring political entities; making certain provisions for tax exemptions and taxation of users.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1.01. This Act may be cited as the "Health Facilities Development Act."

SECTION 1.02. It is hereby found, determined, and declared that the present and prospective health, safety, and general welfare of the people of this state require the providing by health facilities, as defined in this Act, of adequate, reasonable, and accessible health care, research, and education; that such health facilities in many portions of this state are presently obsolete, inadequate, or insufficient in number; and that the cost of health care, research, and education within this state has in many cases become excessive. It is the purpose of this Act to enable cities, counties, and hospital districts, as defined in this Act, to create corporations, as defined in this Act, with powers to provide, expand, and improve health facilities, as defined in this Act, determined by such corporations to be needed for the purpose of improving the adequacy, cost, and accessibility of health care, research, and education within this state. It is therefore determined and declared as a matter of public policy that the creation of such corporations, the issuance of revenue bonds and notes by such corporations, and the exercise of the other powers of such corporations, all as

herein provided, are in the public interest and in furtherance of an important public purpose. This Act shall therefore be liberally construed in conformity with the intention of the legislature herein expressed.

SECTION 1.03. When used in this Act, unless the context requires a different definition:

(1) "Board of directors" means the board of directors of any corporation organized pursuant to the provisions of this Act.

(2) "Bonds" means bonds, notes, interim certificates, or other evidences of indebtedness of a corporation issued pursuant to this Act.

(3) "City" means any municipal corporation of this state presently existing or created hereafter, whether existing or created by general law or pursuant to a home-rule charter.

(4) "Corporation" means any health facilities development corporation created and existing under the provisions of this Act as a public corporation and constituted authority for the purposes set forth in this Act.

(5) "Cost" as applied to a health facility, as herein defined, means and includes any and all costs of such health facility and, without limiting the generality of the foregoing, shall include the following:

(A) the cost of the acquisition of all land, rights-of-way, options to purchase land, easements, leasehold estates in land, and interests of all kinds in land related to such health facility;

(B) the cost of the acquisition, construction, repair, renovation, remodeling, or improvement of all buildings and structures to be used as or in conjunction with such health facility;

(C) the cost of site preparation, including the cost of demolishing or removing any buildings or structures the removal of which is necessary or incident to providing such health facility;

(D) the cost of architectural, engineering, legal, and related services; the cost of the preparation of plans, specifications, studies, surveys, and estimates of cost and of revenue; and all other expenses necessary or incident to planning, providing, or determining the feasibility and practicability of such health facility;

(E) the cost of all machinery, equipment, furnishings, and facilities necessary or incident to the equipping of such health facility so that it may be placed in operation;

(F) the cost of financing charges and interest prior to and during construction and for a maximum of two years after completion of construction and the start-up costs of such health facility during construction and for a maximum of two years after completion of construction;

(G) any and all costs paid or incurred in connection with the financing of such health facility, including out-of-pocket expenses and compensation described in Subsection (e) of Section 4.04 hereof and further including without limitation the cost of financing, legal, accounting, financial advisory, and appraisal fees, expenses, and disbursements; the cost of any policy or policies of title insurance; the cost of printing, engraving, and reproduction services; and the cost of the initial or acceptance fee of any trustee or paying agent; and

(H) all direct and indirect costs of the corporation, as herein defined, incurred in connection with providing such health facility, including without limitation reasonable sums to reimburse such corporation for time spent by its agents or employees with respect to providing such health facility and the financing thereof.

(6) "County" means a political subdivision of the State of Texas created and established under Article IX, Section 1, of the Constitution of Texas.

(7) "Director" means any member of a board of directors as herein defined.

(8) "District" means a hospital district presently existing or created hereafter under authority of the constitution and laws of Texas.

(9) "Governing body" means, with reference to a sponsoring entity, as herein defined, the board of directors, council, commission, commissioners court, managers, trustees, or similar body charged by law with governance of such sponsoring entity.

(10) "Health facility" means and includes any real, personal, or mixed property, or any interest therein, the financing, refinancing, acquiring, providing, constructing, enlarging, remodeling, renovating, improving, furnishing, or equipping of which is found by the board of directors of the corporation to be required, necessary, or convenient for health care, research, and education, any one or more, within this state, regardless of whether such property is in existence or is to be provided after the making of such finding. Without limiting the generality of the foregoing and when found by the board of directors of a corporation, as herein defined, to be so required, necessary, or convenient, "health facility" shall include any combination of one or more of the following:

(A) any land, buildings, equipment, machinery, furniture, facilities, and improvements;

(B) any structure suitable for use as a hospital, clinic, health facility, nursing home, extended-care facility, out-patient facility, rehabilitation facility, pharmacy, medical laboratory, dental laboratory, physicians' office building, laundry facility, administrative facility, computer facility, communication facility, fire-fighting or fire-prevention facility, food service and preparation facility, parking facility or parking area, storage facility, utility facility, x-ray facility, or building related to any health-care or health-care-related facility or system;

(C) any structure suitable for use as a multiunit housing facility for medical staff, nurses, interns, and other employees of a health-care or health-care-related facility or system and the relatives of such persons, patients of a health-care facility, or relatives of patients admitted for treatment or care in a health-care facility;

(D) any structure suitable for use as a medical or dental research facility, medical or dental training facility, or any other facility used in the education or training of health-care personnel;

(E) any property or material used in the landscaping, equipping, or furnishing of a health-care or health-care-related facility or any similar items necessary or convenient for the operation of a health-care or health-care-related facility; and

(F) any other structure, facility, or equipment related to or essential to the operation of any health-care or health-care-related facility or system except that a health facility shall not include any nursing home organized for profit.

(11) "Resolution" means any resolution, order, ordinance, or other official action by the governing body, as herein defined, of a sponsoring entity, as herein defined.

(12) "Sponsoring entity" means any city, county, or district, all as herein defined.

(13) "User" means the person or persons, whether natural or corporate, who will occupy, operate, manage, or employ a health facility, as herein defined, after the financing, acquisition, or construction of such health facility, whether as owner, purchaser, lessee, manager, or otherwise.

The use of a singular term herein shall also include the plural of such term and the use of a plural term herein shall also include the singular of such term unless the context clearly requires a different connotation.

SECTION 2.01. There are hereby authorized to be created by sponsoring entities only, in accordance with the procedures set forth in this Act, nonmember, nonstock public corporations with the powers herein set forth for the sole purpose of acquiring, constructing, providing, improving, financing, and refinancing health facilities in order to assist the maintenance of the public health, which purpose is hereby declared to be a public purpose of this state and of every sponsoring entity on behalf of which such a corporation is created hereunder. Every sponsoring entity is hereby authorized to create and to utilize one or more corporations (1) to provide health facilities for the promotion and development of health care, research, and education, all for the public purpose of promoting the health and welfare of the citizens of this state, and (2) to issue bonds on its behalf to finance the cost of health facilities, all as provided in and in accordance with the terms of this Act. No sponsoring entity is or shall be authorized to lend its credit or grant any public money or thing of value in aid of a corporation.

SECTION 2.02. Whenever the governing body of a sponsoring entity by appropriate resolution finds and determines that it is in the public interest and to the benefit of its residents and the citizens of this state that a corporation be created to promote and develop new, expanded, or improved health facilities in order to assist the maintenance of the public health and the public welfare, the governing body may by appropriate resolution authorize and approve creation of one or more corporations on behalf of the sponsoring entity with the powers set forth in this Act and shall approve proposed articles of incorporation for such corporation. Any number of natural persons, not less than three, each of whom is at least 18 years of age and a resident of the sponsoring entity, may then act as incorporators of such corporation by signing and verifying the articles of incorporation and delivering the original and two copies of the articles of incorporation to the secretary of state. The articles of incorporation of the corporation shall set forth:

- (1) the name of the corporation;
- (2) a statement that the corporation is a nonprofit public corporation;
- (3) the period of duration of the corporation, which may be perpetual;
- (4) a statement that the purpose of the corporation is to acquire, construct, provide, improve, finance, and refinance health facilities to assist the maintenance of the public health;
- (5) a statement that the corporation has no members and is a nonstock corporation;
- (6) any provision for the regulation of the internal affairs of the corporation not inconsistent with law, including any provision which under this Act is required or permitted to be set forth in the bylaws;
- (7) the street address of its initial registered office and the name of its initial registered agent at such street address;
- (8) the number of directors constituting the initial board of directors and the names and addresses of the persons who are to serve as the initial directors;
- (9) the name and street address of each incorporator; and
- (10) the name and address of the sponsoring entity and a statement that the sponsoring entity has by resolution specifically authorized the corporation to act on its behalf to further the public purpose set forth in the articles of incorporation and has approved the articles of incorporation.

It shall not be necessary to set forth in the articles of incorporation any of the corporate powers enumerated in this Act. Unless the articles of incorporation provide that a change in the number of directors shall be made only by amendment to the articles of incorporation, a change in the number of directors made by amendment to the bylaws shall be controlling. In all other

cases, whenever a provision of the articles of incorporation is inconsistent with a bylaw, the provision of the articles of incorporation shall be controlling.

SECTION 2.03. (a) The original and two copies of the articles of incorporation and a certified copy of the resolution by the governing body of the sponsoring entity approving such articles shall be delivered to the secretary of state. If the secretary of state finds that the articles of incorporation conform to the requirements of this Act and have been approved by the governing body of the sponsoring entity, he shall, when all fees have been paid as in this Act prescribed:

- (1) endorse on the original and each copy of such articles the word "filed" and the month, day, and year of the filing thereof;
- (2) file the original of such articles in his office; and
- (3) issue two certificates of incorporation to each of which he shall affix one copy of such articles.

(b) A certificate of incorporation, together with a copy of the articles of incorporation affixed thereto, shall be delivered by the secretary of state to the incorporators or their representative and to the governing body of the sponsoring entity on behalf of which the corporation was created.

(c) Upon the issuance of the certificate of incorporation, the corporate existence shall begin, and such certificate of incorporation shall be conclusive evidence that all conditions precedent required to be performed by the incorporators and by the sponsoring entity have been complied with and that the corporation has been incorporated under this Act.

SECTION 2.04. After the issuance of the certificate of incorporation, an organizational meeting of the board of directors named in the articles of incorporation shall be held within this state at the call of a majority of the incorporators for the purpose of adopting bylaws and electing officers and for such other purposes as may come before the meeting. The incorporators calling the meeting shall give notice thereof by mail to each director named in the articles of incorporation, which notice shall state the time and place of the meeting and shall be mailed, postage prepaid, not less than five days prior to the time of such meeting.

SECTION 2.05. (a) The articles of incorporation shall be amended at any time and from time to time in any and as many respects as may be desired so long as such articles as amended contain only such provisions as are lawful under this Act when and if the governing body of the sponsoring entity on behalf of which the corporation was created by appropriate resolution finds and determines that such amendment is advisable and authorizes or directs that such amendment be made.

(b) The articles of amendment shall be executed by the corporation by its president or by a vice-president and by its secretary or an assistant secretary or by the presiding officer and the secretary or clerk of the governing body of the sponsoring entity on behalf of which the corporation was created, verified by one of the officers signing such articles, and shall set forth:

- (1) the name of the corporation;
- (2) if the amendment alters any provision of the original or amended articles of incorporation, an identification by reference or description of the altered provision and a statement of its text as it is amended to read; if the amendment is an addition to the original or amended articles of incorporation, a statement of that fact and the full text of each provision added; and
- (3) the name and current address of the sponsoring entity, a statement that such amendment was authorized by the governing body of the sponsoring entity, and the date of the meeting at which the amendment was adopted or approved by such governing body.

SECTION 2.06. (a) The original and two copies of the articles of amendment shall be delivered to the secretary of state together with a certified copy of the resolution of the governing body of the sponsoring entity authorizing such articles. If the secretary of state finds that the articles of amendment conform to the requirements of this Act and have been authorized by the governing body of the sponsoring entity on behalf of which the corporation was created, he shall, when all fees have been paid as in this Act prescribed:

- (1) endorse on the original and on each copy of such articles the word "filed" and the month, day, and year of the filing thereof;
- (2) file the original of such articles in his office; and
- (3) issue two certificates of amendment to each of which he shall affix one copy of such articles.

(b) A certificate of amendment, together with a copy of the articles of amendment affixed thereto, shall be delivered by the secretary of state to the corporation or its representative and to the governing body of the sponsoring entity on behalf of which the corporation was created.

(c) Upon the issuance of the certificate of amendment by the secretary of state, the amendment shall become effective and the articles of incorporation shall be deemed to be amended accordingly.

(d) No amendment shall affect any existing cause of action in favor of or against such corporation, any pending suit to which such corporation shall be a party, or the existing rights of any persons; and, in the event the corporate name shall be changed by amendment, no suit brought by or against such corporation under its former name shall abate for that reason.

SECTION 2.07. (a) A corporation may, by following the procedure to amend the articles of incorporation provided by this Act, including obtaining authorization from the governing body of the sponsoring entity on behalf of which the corporation was created, authorize, execute, and file restated articles of incorporation which may restate either:

(1) the entire text of the articles of incorporation as amended or supplemented by all certificates of amendment previously issued by the secretary of state; or

(2) the entire text of the articles of incorporation as amended or supplemented by all certificates of amendment previously issued by the secretary of state and as further amended by such restated articles of incorporation.

(b) If the restated articles of incorporation restate the entire articles of incorporation as amended and supplemented by all certificates of amendment previously issued by the secretary of state, without making any further amendment thereof, the introductory paragraph shall contain a statement that the instrument accurately copies the articles of incorporation and all amendments thereto that are in effect to date and that the instrument contains no change in the provisions thereof, provided that the number of directors then constituting the board of directors and the names and addresses of the persons then serving as directors may be inserted in lieu of similar information concerning the initial board of directors, and the name and address of each incorporator may be omitted.

(c) If the restated articles of incorporation restate the entire articles of incorporation as amended and supplemented by all certificates of amendment previously issued by the secretary of state and as further amended by such restated articles of incorporation, the instrument containing such articles shall:

(1) set forth for any amendment made by such restated articles of incorporation a statement that each such amendment has been effected in conformity with the provisions of this Act and further set forth the statements required by this Act to be contained in articles of amendment; provided that the

full text of such amendments need not be set forth except in the restated articles of incorporation as so amended;

(2) contain a statement that the instrument accurately copies the articles of incorporation and all amendments thereto that are in effect to date and as further amended by such restated articles of incorporation and that the instrument contains no other change in any provision thereof; provided that the number of directors then constituting the board of directors and the names and addresses of the persons then serving as directors may be inserted in lieu of similar information concerning the initial board of directors, and the names and addresses of the incorporators may be omitted; and

(3) restate the entire text of the articles of incorporation as amended and supplemented by all certificates of amendment previously issued by the secretary of state and as further amended by such restated articles of incorporation.

(d) Such restated articles of incorporation shall be executed by the corporation by its president or a vice-president and by its secretary or an assistant secretary or by the presiding officer and the secretary or clerk of the governing body of the sponsoring entity on behalf of which the corporation was created and shall be verified by one of the officers signing such articles.

SECTION 2.08. (a) The original and two copies of the restated articles of incorporation and a certified copy of the resolution of the governing body of the sponsoring entity authorizing such articles shall be delivered to the secretary of state. If the secretary of state finds that the restated articles of incorporation conform to the requirements of this Act and have been authorized by the governing body of the sponsoring entity on behalf of which the corporation was created, he shall, when all fees have been paid as in this Act prescribed:

(1) endorse on the original and on each copy of such restated articles the word "filed" and the month, day, and year of the filing thereof;

(2) file the original of such restated articles in his office; and

(3) issue two restated certificates of incorporation to each of which he shall affix one copy of such restated articles.

(b) A restated certificate of incorporation, together with a copy of the restated articles of incorporation affixed thereto, shall be delivered by the secretary of state to the corporation or its representative and to the governing body of the sponsoring entity on behalf of which the corporation was created.

(c) Upon the issuance of the restated certificate of incorporation by the secretary of state, the original articles of incorporation and all amendments thereto shall be superseded and the restated articles of incorporation shall be deemed to be articles of incorporation of the corporation.

SECTION 3.01. Each corporation shall have and continuously maintain in this state:

(1) a registered office, which may be, but need not be, the same as its principal office; and

(2) a registered agent, which agent may be an individual resident in this state whose business office is identical with such registered office or a domestic or foreign corporation, whether for profit or not for profit, authorized to transact business or to conduct its affairs in this state which has a principal or business office identical with such registered office.

SECTION 3.02. (a) A corporation may change its registered office or change its registered agent, or both, upon filing in the office of the secretary of state a statement setting forth:

(1) the name of the corporation;

(2) the post-office address of its then registered office;

(3) if the post-office address of its registered office is to be changed, the post-office address to which the registered office is to be changed;

- (4) the name of its then registered agent;
 - (5) if its registered agent is to be changed, the name of its successor registered agent;
 - (6) a statement that the post-office address of its registered office and the post-office address of the business office of its registered agent, as changed, will be identical; and
 - (7) a statement that such change was authorized by the board of directors or by an officer of the corporation so authorized by the board of directors.
- (b) Such statement shall be executed by the corporation by its president or vice-president and verified by him. The original and a copy of such statement shall be delivered to the secretary of state. If the secretary of state finds that such statement conforms to the provisions of this Act, he shall, when all fees have been paid as in this Act prescribed:
- (1) endorse on the original and the copy the word "filed" and the month, day, and year of the filing thereof;
 - (2) file the original in his office; and
 - (3) return the copy to the corporation or its representative.
- (c) Upon such filing, the change of address of the registered office or the appointment of a new registered agent, or both, as the case may be, shall become effective.
- (d) Any registered agent of a corporation may resign by giving written notice:
- (1) to the corporation at its last known address; and
 - (2) in triplicate (the original and two copies of the notice) to the secretary of state within 10 days after mailing or delivery of said notice to the corporation.
- Such notice shall include the last known address of the corporation and shall include a statement that written notice of resignation has been given to the corporation and the date thereof. Upon compliance with the requirements as to written notice, the appointment of such agent shall terminate upon the expiration of 30 days after receipt of such notice by the secretary of state.
- (e) If the secretary of state finds that such written notice conforms to the provisions of this Act, he shall, when all fees have been paid as in this Act prescribed:
- (1) endorse on the original and both copies the word "filed" and the month, day, and year of the filing thereof;
 - (2) file the original in his office;
 - (3) return one copy to such resigning registered agent; and
 - (4) deliver one copy to the corporation at the last known address of the corporation as shown in such written notice.

SECTION 3.03. (a) The president and all vice-presidents of any corporation and the registered agent of such corporation shall be agents of such corporation upon whom may be served any process, notice, or demand required or permitted by law to be served upon the corporation.

(b) Whenever a corporation shall fail to appoint or maintain a registered agent in this state or whenever its registered agent cannot with reasonable diligence be found at the registered office, then the secretary of state shall be an agent of such corporation upon whom any such process, notice, or demand may be served. Service on the secretary of state of any process, notice, or demand shall be made by delivering to and leaving with him, with the assistant secretary of state, or with any clerk having charge of the corporation department of his office duplicate copies of such process, notice, or demand. In the event any such process, notice, or demand is served on the secretary of state, he shall immediately cause one of the copies thereof to be forwarded by registered mail, addressed to the corporation at its registered office. Any service so had on the secretary of state shall be returnable in not less than 30 days.

(c) The secretary of state shall keep a record of all processes, notices, and demands served upon him under this section and shall record therein the time of such service and his action with reference thereto.

SECTION 3.04. The affairs of a corporation shall be managed by a board of directors. The board of directors shall consist of any number of natural persons, not less than three, each of whom shall be appointed by the governing body of the sponsoring entity on behalf of which the corporation was created for a term of no more than six years, and each of whom shall be removable by the governing body of such sponsoring entity for cause or at will. The directors constituting the first board of directors shall be named in the articles of incorporation. Directors may be divided into classes, and the terms of office of the several classes need not be uniform. Each director shall hold office for the term for which he is appointed and until his successor shall have been appointed and qualified unless sooner removed. The directors shall serve as such without compensation except that they shall be reimbursed for their actual expenses incurred in the performance of their duties hereunder.

SECTION 3.05. The initial bylaws of a corporation shall be adopted by its board of directors. The power to alter, amend, or repeal the bylaws or to adopt new bylaws shall be vested in the board of directors. The bylaws may contain any provisions for the regulation and management of the affairs of a corporation not inconsistent with law or with the articles of incorporation. The initial bylaws and all amendments thereto, substitutes therefor, and repeals thereof shall be subject to the approval of the governing body of the sponsoring entity on behalf of which the corporation was created.

SECTION 3.06. (a) If the articles of incorporation or the bylaws so provide, the board of directors, by resolution adopted by a majority of the directors in office, may designate one or more committees, which, to the extent provided in such resolution, in the articles of incorporation, or in the bylaws, shall have and exercise the authority of the board of directors in the management of the corporation. Each such committee shall consist of two or more persons, all of whom shall be directors. The designation of such committees and the delegation thereto of authority shall not operate to relieve the board of directors or any individual director of any responsibility imposed upon it or him by law.

(b) Other committees not having and exercising the authority of the board of directors in the management of the corporation may be designated and appointed by a resolution adopted by a majority of the directors at a meeting at which a quorum is present or by the president thereunto authorized by a like resolution of the board of directors or by the articles of incorporation or by the bylaws. Membership on such committees may, but need not be limited to directors.

SECTION 3.07. (a) Regular meetings of the board of directors may be called and may be held at any location within the state with or without notice as prescribed in the bylaws. Special meetings of the board of directors shall be held at any location within the state upon such notice as is prescribed in the bylaws.

Attendance of a director at a meeting shall constitute a waiver of notice of such meeting, except where a director attends a meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened. Neither the business to be transacted at nor the purpose of any regular or special meeting of the board of directors need be specified in the notice or waiver of notice of such meeting, unless required by the bylaws.

(b) A quorum for the transaction of business by the board of directors shall be whichever is less:

(1) a majority of the number of directors fixed by the bylaws or, in the absence of a bylaw fixing the number of directors, a majority of the number of directors stated in the articles of incorporation; or

(2) any number, not less than three, fixed as a quorum by the articles of incorporation or the bylaws.

(c) The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the board of directors, unless the act of a greater number is required by the articles of incorporation or the bylaws of the corporation.

(d) Any action required to be taken at a meeting of the board of directors or any action which may be taken at a meeting of the board of directors or any committee may be taken without a meeting if a consent in writing, setting forth the action to be taken, shall be signed by all directors or all of the members of the committee, as the case may be. Such consent shall have the same force and effect as a unanimous vote and may be stated as such in any articles or document filed with the secretary of state under this Act.

SECTION 3.08. The officers of a corporation shall consist of a president, a vice-president, and a secretary, and such officers may include a treasurer and such other officers and assistant officers as may be deemed necessary, each of whom shall be elected or appointed at such time and in such manner and for such terms not exceeding three years as may be prescribed in the articles of incorporation or the bylaws. In the absence of any such provisions, all officers shall be elected or appointed annually by the board of directors. Any two or more offices may be held by the same person, except the offices of president and secretary. Any officer elected or appointed may be removed by the persons authorized to elect or appoint such officer whenever in their judgment the best interests of the corporation will be served thereby.

SECTION 3.09. (a) A corporation shall have the power to indemnify any director or officer or former director or officer of the corporation for expenses and costs, including attorney's fees, actually and necessarily incurred by him in connection with any claim asserted against him by action in court or otherwise, by reason of his being or having been such director or officer, except in relation to matters as to which he shall have been guilty of negligence or misconduct in respect of the matter in which indemnity is sought.

(b) If the corporation has not fully indemnified him, the court in the proceeding in which any claim against such director or officer has been asserted or any court having the requisite jurisdiction of an action instituted by such director or officer on his claim for indemnity may assess indemnity against the corporation or its receiver or trustee for the amount paid by such director or officer in satisfaction of any judgment or in compromise of any such claim, exclusive in either case of any amount paid to the corporation, and any expenses and costs, including attorney's fees, actually and necessarily incurred by him in connection therewith to the extent that the court shall deem reasonable and equitable; provided, nevertheless, that indemnity may be assessed under this section only if the court finds that the person indemnified was not guilty of negligence or misconduct in respect of the matter in which indemnity is sought.

SECTION 4.01. Every corporation established under the provisions of this Act shall have all the rights and powers necessary or convenient to accomplish the purposes of such corporation as set forth herein, including without limitation the powers:

(1) to provide or cause to be provided by a user by acquisition (whether by purchase, devise, gift, lease, or any one or more of such methods),

construction, or improvement one or more health facilities located within this state and within or partially within the limits of the sponsoring entity on behalf of which the corporation was created or, with the consent of every other sponsoring entity within which such health facility is or is to be located, outside the limits of the sponsoring entity on behalf of which such corporation was created;

(2) to lease as lessor all or any part of any health facility for such rentals and upon such terms and conditions as the corporation may deem advisable and as are not in conflict with the provisions of this Act;

(3) to sell for installment payments or otherwise, to option or contract for sale, and to convey all or any part of any health facility for such price and upon such terms and conditions as the corporation may deem advisable and as are not in conflict with the provisions of this Act;

(4) to make contracts and incur liabilities, borrow money at such rates of interest as the corporation may determine, issue its bonds in accordance with the provisions of this Act, and secure any of its bonds or obligations by mortgage or pledge of all or any of its property, franchises, and income;

(5) to make secured or unsecured loans for the purpose of providing temporary or permanent financing or refinancing of all or part of the cost of any health facility, including the refunding of any outstanding obligations, mortgages, or advances issued, made, or given by any person for the cost of a health facility, and to charge and collect interest on such loans for such loan payments and upon such terms and conditions as the board of directors of such corporation may deem advisable and as are not in conflict with the provisions of this Act;

(6) to lend money for its corporate purposes, invest and reinvest its funds, and take and hold real and personal property as security for the payment of funds so loaned or invested;

(7) to purchase, receive, lease, or otherwise acquire, own, hold, improve, use, or otherwise deal in and with real or personal property or any interest therein, wherever situated, as the purposes of the corporation shall require or as shall be donated to it;

(8) to sell, convey, mortgage, pledge, lease, exchange, transfer, and otherwise dispose of all or any part of its property and assets;

(9) to elect or appoint officers and agents of the corporation for such period of time as the corporation may determine and define their duties;

(10) to sue and be sued, complain and defend, in its corporate name;

(11) to have a corporate seal which may be altered at its pleasure and to use the same by causing it or a facsimile thereof to be impressed on, affixed to, or in any manner reproduced upon instruments of any nature required or authorized to be executed by its proper officers;

(12) to make and alter bylaws not inconsistent with its articles of incorporation or with the laws of this state for the administration and regulation of the affairs of the corporation, provided that such bylaws and all amendments thereto are approved by resolution of the governing body of the sponsoring entity on behalf of which the corporation was created;

(13) to cease its corporate activities and terminate its existence by dissolution as provided herein; and

(14) whether included in the foregoing or not, to have and exercise all powers necessary or appropriate to effect any or all of the purposes for which the corporation is organized.

Provided, however, that no corporation shall be authorized to incur financial obligations under this Act unless payable solely from the proceeds of bonds, revenues derived from the lease or sale of a health facility or realized

from a loan made by a corporation to finance or refinance in whole or in part a health facility, revenues derived from operating a health facility, or any other revenues as may be provided by a user of a health facility, any one or more; provided further, however, that such powers shall be subject at all times to the control of the governing body of the sponsoring entity on behalf of which the corporation was created as provided in Section 4.12 hereof; and further provided, however, that nothing in this Act shall be interpreted to bestow upon or authorize a sponsoring entity to delegate to a corporation the power of taxation, the power of eminent domain, the police power, or any equivalent sovereign power of this state or any sponsoring entity. Nothing in this section grants any authority to officers or directors of a corporation for the exercise of any of the foregoing powers inconsistent with limitations on any of the same which may be expressly set forth in this Act or in the articles of incorporation or bylaws or in any other laws of this state. Authority of officers and directors to act beyond the scope of the purpose or purposes of a corporation is not granted by any provisions of this section.

SECTION 4.02. Any corporation may convey land by deed, with or without the seal of the corporation, signed by the president or vice-president or attorney in fact of the corporation when authorized by appropriate resolution of the board of directors. Such deed, when acknowledged by such officer or attorney in fact to be the act of the corporation or proved in the manner prescribed for other conveyances of land, may be recorded in like manner and with the same effect as other deeds. Any such deed when recorded, if signed by the president or any vice-president of the corporation, shall constitute prima facie evidence that such resolution of the board of directors was duly adopted.

SECTION 4.03. At least 14 days prior to the issuance of bonds by a corporation, such corporation shall file with the governing body of the sponsoring entity on behalf of which such corporation was created a full and complete description of any health facility the cost of which is to be paid in whole or in any part from the proceeds of bonds of the corporation proposed to be issued, including an explanation of the projected costs of and the necessity for such proposed health facility and the name of the proposed user of such health facility. All of the information deposited or required to be deposited by this section shall be public information open to public inspection.

SECTION 4.04. (a) Each corporation is hereby authorized to issue, sell, and deliver its bonds in accordance with the terms of this Act for the purpose of paying all or any part of the cost of a health facility.

(b) The bonds shall be dated, shall bear interest at such rate or rates (fixed or variable), shall mature at such time or times not exceeding 40 years from their date, and may be made redeemable prior to maturity at such price or prices and upon such terms and conditions as may be determined by the corporation. The bonds, including any interest coupons to be initially attached thereto, shall be in such form and denomination or denominations and payable at such place or places, and may be executed or authenticated in such manner, as the corporation may determine. In cases where any officer whose signature or a facsimile of whose signature shall appear on any bonds or coupons shall cease to be such officer before the delivery of and payment for such bonds such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if such officer had remained in office until such delivery and payment. The bonds may be issued in coupon or in registered form, or both, or may be payable to a specific person, as the corporation may determine, and provision may be made for the registration of any coupon bonds as to principal alone, for the conversion of coupon bonds into fully registered bonds without coupons, and for the reconversion into coupon bonds of any fully

registered bonds without coupons. The duty of conversion or reconversion may be imposed upon a trustee in a trust agreement.

(c) The principal of redemption premium, if any and interest on such bonds shall be payable solely from and may be secured by a pledge of all or any part of the proceeds of bonds, revenues derived from the lease or sale of a health facility or realized from a loan made by a corporation to finance or refinance in whole or in part a health facility, revenues derived from operating a health facility, or any other revenues as may be provided by a user of a health facility, any one or more.

(d) The corporation shall sell the bonds at such price or prices as it shall determine, at public or private sale. The net effective interest rate, calculated in accordance with Chapter 3, Acts of the 61st Legislature, Regular Session, 1969, as amended (Article 717k-2, Vernon's Texas Civil Statutes), on any bonds may not exceed a rate equal to the maximum annual interest rate established for business loans of \$250,000 or more in this state.

(e) The proceeds of the bonds of each issue shall be used solely for the payment of all or part of the cost of, or for the making of a loan in the amount of all or part of the cost of, the health facility or health facilities for which such bonds have been authorized and, at the option of the corporation, for the deposit to a reserve fund or reserve funds for the bonds. Such proceeds shall be disbursed in such manner and under such restrictions, if any, as may be determined by the corporation. Each corporation shall be paid out of money from the proceeds of the sale and delivery of its bonds issued in accordance with this Act an amount of money equal to all of such corporation's out-of-pocket expenses and costs in connection with the issuance, sale, and delivery of such bonds, including without limitation all financing, legal, financial advisory, printing, and other expenses and costs in issuing such bonds, plus an amount of money equal to the compensation paid to any employees of such corporation for the time such employees have spent on activities relating to the issuance, sale, and delivery of such bonds.

(f) Prior to the preparation or issuance of definitive bonds, the corporation may issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when such bonds shall have been executed and are available for delivery. Such interim receipts or temporary bonds shall be for a maximum term of three years.

SECTION 4.05. Each corporation is hereby authorized to issue, sell, and deliver its bonds for the purpose of refunding any bonds of the corporation then outstanding, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such bonds. The issuance of such bonds, the maturities and other terms thereof, the rights of the holders thereof, and the rights, duties, and obligations of the corporation in respect thereof shall be governed by the provisions of this Act insofar as the same shall be applicable. Within the discretion of the corporation, such refunding bonds may be issued in exchange or substitution for outstanding bonds or may be sold and the proceeds used for the purpose of paying or redeeming outstanding bonds.

SECTION 4.06. Bonds issued in accordance with the provisions of this Act shall not constitute obligations of the State of Texas, any sponsoring entity or any other political subdivision or agency of this state or a pledge of the faith and credit of any of them. All such bonds shall contain on the face thereof a statement to the effect that (1) neither the State of Texas nor any political subdivision or agency of the State of Texas, including the sponsoring entity on behalf of which the corporation issuing such bonds was created shall be obligated to pay the same or the interest thereon and (2) neither the faith and

credit nor the taxing power of the State of Texas, said sponsoring entity, or any other political subdivision or agency thereof is pledged to the payment of the principal of, redemption premium, if any, or interest on such bonds.

SECTION 4.07. Any bonds issued by a corporation under the provisions of this Act and coupons, if any, representing interest thereon, shall be exempt securities under the Texas Securities Act, as amended (Article 581-1 et seq., Vernon's Texas Civil Statutes). If, however, any bonds issued by a corporation under this Act are secured by an agreement by a user to pay to the corporation amounts sufficient to pay the principal of, redemption premium, if any, and interest on such bonds, notwithstanding that such bonds shall be exempt securities, such an agreement by a user shall be deemed to be a separate security issued by such user, and not by such corporation, to the purchasers of such bonds for purposes of the provisions of the Texas Securities Act and shall be exempt from the provisions of such act only (1) if such security is an exempt security pursuant to the terms of such act or (2) if such bonds or the payments to be made under such agreement are guaranteed by any person and such guarantee is an exempt security pursuant to the terms of such act.

SECTION 4.08. Unless the bonds issued under this Act are ineligible for investments in accordance with criteria established in other statutes, rulings, or regulations of the State of Texas or the United States, the bonds issued under this Act shall be and are hereby declared to be legal and authorized investments for any banks; savings banks; trust companies; building and loan associations; insurance companies; fiduciaries; trustees and guardians; and sinking funds for cities, towns, villages, counties, school districts, and other political corporations or subdivisions of the State of Texas. Such bonds shall be eligible to secure the deposit of any and all public funds of the State of Texas and any and all public funds of cities, towns, villages, counties, school districts, and other political corporations or subdivisions of the State of Texas, and they shall be lawful and sufficient security for said deposits at their face value when accompanied by all unmatured coupons, if any, appertaining thereto.

SECTION 4.09. Any security interest granted by a corporation may be perfected in the manner and with the effect specified in Chapter 9, Uniform Commercial Code-Secured Transactions, as amended, any provision in Article 9.104, as amended, of such code to the contrary notwithstanding.

SECTION 4.10. Any health facility, including any leasehold estate therein, owned by a corporation which would otherwise be taxable to such corporation under the provisions of the Property Tax Code but for the purposes and nonprofit nature of a corporation shall be assessed to the user of such health facility or if more than one such user exists, to the users thereof in proportion to the value of the rights of such users to occupy, operate, manage, or employ such health facility, all to the same extent and subject to the same exemptions from taxation, if any, as if such health facility were owned by such user or users. The user of any health facility shall be considered to be the owner of such health facility for the purposes of the application of any sales and use taxes both in the construction of the health facility and any further sale, lease, or rental of the health facility or any other taxes levied or imposed by this state or any political subdivision of this state. It is hereby declared as a matter of public policy that every corporation organized under the authority of this Act shall be engaged exclusively in the performance of charitable functions and shall be exempt from all taxation by this state and every municipal corporation and political subdivision hereof. All bonds issued by a corporation hereunder, their transfer, the interest thereon, and any profits from the sale or exchange thereof shall at all times be free from taxation by this state or any municipal corporation or political subdivision hereof.

SECTION 4.11. Any corporation created under the provisions of this Act shall be a nonprofit corporation, and no part of its net earnings remaining after payment of its bonds and its expenses in accomplishing the public purpose provided for in this Act shall inure to the benefit of any person other than the sponsoring entity on behalf of which the corporation was created.

SECTION 4.12. The sponsoring entity on behalf of which a corporation was created may, in its sole discretion and at any time, alter the structure, organization, programs, or activities of such corporation, subject only to any limitation provided by the constitution and laws of the State of Texas and of the United States relating to the impairment of contracts entered into by the corporation. Representatives of the sponsoring entity on behalf of which a corporation is created shall have access at any time to all books and records of such corporation.

SECTION 5.01. (a) Whenever all bonds and obligations of a corporation have been paid and discharged or adequate provision has been made therefor and the governing body of the sponsoring entity on behalf of which the corporation was created shall have by written resolution authorized and directed the dissolution of such corporation, such corporation shall be dissolved as hereinafter provided.

(b) The articles of dissolution shall be executed by the corporation by its president or a vice-president and by its secretary or an assistant secretary or by the presiding officer and the secretary or clerk of the governing body of the sponsoring entity on behalf of which the corporation was created, verified by one of the officers signing such articles, and shall set forth:

- (1) the name of the corporation;
- (2) the name and address of the sponsoring entity, a statement that dissolution of the corporation has been authorized by the governing body of the sponsoring entity, and the date of the meeting at which such dissolution was so authorized;
- (3) a statement that all bonds and obligations of the corporation have been paid and discharged or that adequate provision has been made therefor; and
- (4) a statement that there are no suits pending against the corporation in any court or that adequate provision has been made for the satisfaction of any judgment, order, or decree which may be entered against it in any pending suit.

(c) The original and two copies of such articles of dissolution shall be delivered to the secretary of state. If the secretary of state finds that such articles of dissolution conform to the requirements of this Act and have been authorized by the governing of the sponsoring entity on behalf of which the corporation was created, he shall, when all fees have been paid as in this Act prescribed:

- (1) endorse on the original and each copy of such articles the word "filed" and the month, day, and year of the filing thereof;
- (2) file the original of such articles in his office; and
- (3) issue two certificates of dissolution to each of which he shall affix one copy of such articles.

(d) A certificate of dissolution, together with a copy of the articles of dissolution affixed thereto, shall be delivered by the secretary of state to the representative of the dissolved corporation and to the governing body of the sponsoring entity on behalf of which the corporation was created. Upon the issuance of such certificates of dissolution the existence of the corporation shall cease, except for the purpose of suits, other proceedings, and appropriate corporate action by the directors and officers of such corporation as provided in this Act.

(e) Whenever dissolution occurs, whether instituted by the governing body of the sponsoring entity on behalf of which the corporation was created or by the board of directors of such corporation, the title to all funds and properties then owned by such corporation shall automatically vest in such sponsoring entity without any further conveyance, transfer, or act of any kind whatsoever.

SECTION 5.02. The dissolution of a corporation either (1) by the issuance of a certificate of dissolution by the secretary of state or (2) by expiration of its period of duration shall not take away or impair any remedy available to or against such corporation or its directors or officers for any right or claim existing or any liability incurred prior to such dissolution if action or other proceeding thereon is commenced within three years after the date of such dissolution. Any such action or proceeding by or against the corporation may be prosecuted or defended by the corporation in its corporate name. The directors and officers shall have power to take such corporate or other action as shall be appropriate to protect such remedy, right, or claim. If such corporation was dissolved by the expiration of its period of duration, such corporation may amend its articles of incorporation at any time during such period of three years so as to extend its period of duration.

SECTION 6.01. Whenever any notice is required to be given to any director under the provisions of this Act or under the provisions of the articles of incorporation or bylaws of a corporation, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be equivalent to the giving of such notice.

SECTION 6.02. Whenever, with respect to any action to be taken by the directors of a corporation, the articles of incorporation require the vote or concurrence of a greater proportion of the directors, as the case may be, than required by this Act with respect to such action, the provisions of the articles of incorporation shall control.

SECTION 6.03. The secretary of state shall charge and collect for filing articles of incorporation and issuing two certificates of incorporation, filing articles of amendment and issuing two certificates of amendment, filing a statement of change of address of registered office or change of registered agent, or both, filing articles of dissolution, and filing restated articles of incorporation and issuing two restated certificates of incorporation the same fees as are charged by the secretary of state for such respective filings and issuances under the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes), as the same has previously been or may hereafter be amended.

SECTION 6.04. The secretary of state shall have the power and authority reasonably necessary to enable him to administer this Act efficiently and to perform the duties herein imposed upon him.

SECTION 6.05. If the secretary of state shall fail to approve any articles of incorporation, amendment, or dissolution or any other document required by this Act to be approved by the secretary of state before the same shall be filed in his office, he shall, within 10 days after the delivery thereof to him, give written notice of his disapproval to the person or corporation delivering the same, specifying in such notice the reasons therefor. From such disapproval such person or corporation may appeal to any district court of Travis County by filing with the clerk of such court a petition setting forth a copy of the articles or other document sought to be filed and a copy of the written disapproval thereof by the secretary of state; whereupon the matter shall be tried de novo by the court, and the court shall either sustain the action of the secretary of state or direct him to take such action as the court may deem proper. Appeals from all

final orders and judgments entered by the district court under this section in review of any ruling or decision of the secretary of state may be taken as in other civil actions.

SECTION 6.06. All certificates issued by the secretary of state in accordance with the provisions of this Act and all copies of documents filed in his office in accordance with the provisions of this Act when certified by him shall be taken and received in all courts, public offices, and official bodies as prima facie evidence of the facts therein stated and may be officially recorded. A certificate by the secretary of state under the great seal of this state as to the existence or nonexistence of the facts relating to corporations which would not appear from a certified copy of any of the foregoing documents or certificates shall be taken and received in all courts, public offices, and official bodies as prima facie evidence of the existence or nonexistence of the facts therein stated.

SECTION 6.07. The Legislature shall at all times have power to prescribe such regulations, provisions, and limitations as it may deem advisable, which regulations, provisions, and limitations shall be binding upon any and all corporations subject to the provisions of this Act, and the legislature shall have power to amend, repeal, or modify this Act.

SECTION 7.01. (a) This Act shall be cumulative of all other laws on the subject, but this Act shall be wholly sufficient authority within itself for the creation of any corporation authorized herein and all actions by such corporation authorized hereby without reference to any other general or special laws or specific acts or any retrictions or limitations contained therein; and in any case, to the extent of any conflict or inconsistency between any provisions of this Act and any other provisions of law, this Act shall prevail and control; provided, however, that any sponsoring entity and any corporation shall have the right to use the provisions of any other laws not in conflict with the provisions hereof to the extent convenient or necessary to carry out any power or authority, express or implied, granted by this Act. No proceedings, notice, or approval shall be required for the organization of a corporation or the issuance of any bonds or any instruments as security therefor, except as herein provided, any other law to the contrary notwithstanding; provided that nothing herein shall be construed to deprive this state and its municipal corporations and political subdivisions of their respective police powers over any properties of such corporation or to impair any police powers thereover of any official or agency of this state and its municipal corporations and political subdivisions as may be otherwise provided by law.

(b) Notwithstanding any provision of this Act, nothing in this Act shall exempt a corporation or any user from compliance with the Texas Health Planning and Development Act, as amended (Article 4418h, Vernon's Texas Civil Statutes).

SECTION 7.02. Nothing in this Act shall be construed so as to violate any provision of the Constitution of the State of Texas or of the United States, and all acts done under this Act shall be in such manner as will conform thereto, whether expressly provided for or not. If any procedure hereunder may be held by any court to be violative of either of such constitutions, a corporation shall have the power by resolution to provide an alternative procedure conforming with such constitutions. It is the intent of the Legislature in adopting this Act that a corporation authorized pursuant hereto shall be a public corporation, constituted authority, and instrumentality authorized to issue bonds on behalf of the sponsoring entity on behalf of which such corporation is created, all within the meaning of Section 103 of the Internal Revenue Code of 1954, as amended, and the regulations promulgated and rulings issued thereunder, and this Act shall be construed accordingly.

SECTION 7.03. The provisions of this Act are severable. If any word, phrase, clause, paragraph, sentence, section, part, or provision of this Act or the application thereof to any person or circumstance shall be held to be invalid or unconstitutional, the remainder of this Act shall nevertheless be valid; and the Legislature hereby declares that this Act would have been enacted without such invalid or unconstitutional word, phrase, clause, paragraph, sentence, section, part, or provision.

SECTION 7.04. The fact that there is urgent need to provide the authority for cities, counties, and districts to promote the present and prospective health, safety, and general welfare of the people of this state and the promotion of health care, research, and education through development of health facilities creates an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

The Conference Committee Report was read and was filed with the Secretary of the Senate.

SENATE BILL 291 WITH HOUSE AMENDMENTS

Senator Caperton called S.B. 291 from the President's table for consideration of the House amendments to the bill.

The President laid the bill and the House amendments before the Senate.

Committee Amendment No. 1 - Finnell

Substitute the following for S.B. 291:

A BILL TO BE ENTITLED AN ACT

relating to standards for certain animal shelters and the care of animals; providing a penalty.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. DEFINITIONS. In this Act:

(1) "Animal shelter" means a facility that keeps or legally impounds stray, homeless, abandoned, or unwanted animals.

(2) "Board" means the Texas Board of Health.

(3) "Commissioner" means the commissioner of the Texas Department of Health.

(4) "Department" means the Texas Department of Health.

(5) "Person" means an individual, corporation, or association and includes a political subdivision of the state.

SECTION 2. STANDARDS FOR ANIMAL SHELTERS. (a) Every animal shelter operated in this state must comply with the standards for housing and sanitation existing on the effective date of this Act which implement Chapter 752, Acts of the 66th Legislature, Regular Session, 1979 (Article 4477-6a, Vernon's Texas Civil Statutes).

(b) An animal shelter shall separate animals in its custody at all times by species, by sex (if known), and if the animals are not related to one another, by size.

(c) The animal shelter may not confine healthy animals with sick, injured, or diseased animals.

(d) Every person who operates an animal shelter shall, at least once per year, employ a veterinarian to inspect such shelter to determine whether it complies with the requirements of this Act. The veterinarian shall file copies of his report with the person operating the shelter and with the department, on forms prescribed by the department.

(e) The board may require every person operating an animal shelter to keep records of the date and disposition of animals in its custody, to maintain the records on the business premises of the animal shelter, and to make the records available for inspection at reasonable times.

(f) A substantial violation of the requirements of this section is a Class C misdemeanor.

SECTION 3. PERSONNEL TRAINING. The board shall prescribe standards and charge reasonable fees for the training of animal shelter personnel as to animal health and disease control, humane care and treatment, control of animals in an animal shelter, and the transportation of animals.

SECTION 4. ADVISORY COMMITTEE. The governing body of every county, city, town or village in which an animal shelter is situated shall appoint an advisory committee to assist in complying with the requirements of this act.

(b) The advisory committee shall be composed of at least one licensed veterinarian, one county or city official, one person whose duties include the daily operation of an animal shelter, and one representative from an animal welfare organization.

(c) The advisory committee shall meet at least three times a year.

SECTION 5. EUTHANASIA. (a) No person may put to death a dog, cat, or other small animal in the custody of an animal shelter by shooting, except in emergency field conditions, by clubbing, or by administering any of the following substances:

- (1) unfiltered or uncooled carbon monoxide;
- (2) curariform drugs, including curare, succinylcholine, pancuronium, glyceryl, fenesin, used alone;
- (3) magnesium salts, used alone;
- (4) chloral hydrate;
- (5) nicotine; or
- (6) strychnine.

(b) A violation of this section is a Class C misdemeanor.

SECTION 6. REMEDY. Any person may, upon proof of a substantial violation of the requirements of this Act, obtain a mandatory injunction in a court of competent jurisdiction to enjoin such violation.

SECTION 7. FEES. The fees collected under this Act shall be deposited with the State Treasurer to the credit of the General Revenue Fund.

SECTION 8. EFFECTIVE DATE. This Act takes effect September 1, 1982.

SECTION 9. EMERGENCY. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Floor Amendment No. 1 - Patterson

Amend C.S.S.B. 291 as follows:

On page 1, line 13, add the following after the word "state."
but does not include veterinary medicine clinics or livestock commission facilities.

Floor Amendment No. 2 - Bock/Schoolcraft

Amend C.S.S.B. 291 by renumbering Sections 8-9 as 9-10 and inserting a new Section 8 to read as follows:

SECTION 8. EXCEPTION. This Act does not apply in any county having a population of less than 75,000, or to any animal shelter within the city limits of a city having a population of less than 75,000, according to the last preceding federal census.

The amendments were read.

Senator Caperton moved that the Senate do not concur in the House amendments, but that a Conference Committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed.

The President asked if there were any motions to instruct the Conference Committee on S.B. 291 before appointment.

There were no motions offered.

The President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Caperton, Chairman; Sarpalius, Wilson, Brown, Blake.

MESSAGE FROM THE HOUSE

House Chamber
May 27, 1981

HONORABLE W. P. HOBBY
PRESIDENT OF THE SENATE

Sir: I am directed by the House to inform the Senate that the House has passed the following:

The House has TABLED H.B. 606 by Washington by a Record Vote of 96 ayes, 33 noes, and 2 present-not voting.

H.B. 1332, Relating to disposition of fines collected for certain traffic law violations.

H.B. 2401, Relating to the creation, administration, powers, duties, functions, operations, and financing of the Mid-Tex Regional Water Supply District.

Respectfully,

BETTY MURRAY, Chief Clerk
House of Representatives

SENATE BILL 1055 WITH HOUSE AMENDMENT

Senator Jones called **S.B. 1055** from the President's table for consideration of the House amendment to the bill.

Senator Jones moved to concur in the House amendment to the bill.

On motion of Senator Jones and by unanimous consent, the motion to concur was withdrawn.

SENATE BILL 779 WITH HOUSE AMENDMENT

Senator Vale called **S.B. 779** from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

Committee Amendment No. 1 - Maloney

Amend **S.B. 779** as follows:

- (1) On page 1, line 14, insert the words "knowingly and intentionally" after the word "he".
- (2) On page 2, line 4, insert the words "safely and" after the word "to".

The amendment was read.

Senator Vale moved to concur in the House amendment.

The motion prevailed.

RECORD OF VOTE

Senator Wilson asked to be recorded as voting "Nay" on the motion to concur in the House amendment.

SENATE BILL 298 WITH HOUSE AMENDMENT

Senator Williams called **S.B. 298** from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

Committee Amendment No. 1 - Evans

Substitute the following for **S.B. 298**:

**A BILL TO BE ENTITLED
AN ACT**

relating to continuation of the Veterans Affairs Commission of the State of Texas and the administration of veterans' affairs in this state.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 3, Article 5787, Revised Civil Statutes of Texas, 1925, as amended, is amended by amending Subsections (a), (b), (b-1), (d), and (i) and by adding Subsections (m), (n), and (o) to read as follows:

(a) Declaration of purpose: It is hereby declared that the purpose of this Act is to ~~give [take care of the tremendous increase in veterans population in the State of Texas, which has resulted from the Spanish American War, World War I, World War II and other wars in which residents of the state have participated, by giving]~~ proper care and assistance to Texas veterans ~~[of all wars]~~.

(b) Creation, membership: There is hereby created and established by this Act, a Veterans Affairs Commission of the State of Texas. The Commission shall be composed of six (6) ~~[five (5)]~~ members who shall be appointed by the Governor, with the advice, consent and confirmation of the Senate. Appointments to the Commission shall be made without regard to the race, creed, sex, religion, or national origin of the appointees. The members of the Commission ~~[and all male personnel are to be veterans of the Spanish American War, World War I, World War II, or of other wars in which the United States participated. They shall have received honorable discharges from the service of the United States;]~~ shall be citizens and bona fide residents of the State of Texas, and at least four (4) ~~[three (3)]~~ members of the Commission shall have been honorably discharged or honorably released from active military service of the United States ~~[finally separated from the service under honorable conditions as an enlisted man]~~. At all times at least one member of the Commission shall be a person who is classified as a disabled veteran by the Veterans Administration of the United States or the successor to that agency or by the branch of the Armed Forces of the United States in which he served, and whose disability is service-connected and compensable. No member of the Commission shall have a discharge from military service that is less than honorable. No two (2) members of the Commission shall reside in the same Senatorial District, and not more than one (1) shall be from a Senatorial District composed of one (1) county. A person who, because of his activities on behalf of a veterans association, is required to register as a lobbyist under Chapter 422, Acts of the 63rd Legislature, Regular Session, 1973, as amended (Article 6252-9c, Vernon's Texas Civil Statutes), may not serve as a member of the Commission or act as the general counsel to the Commission. Members ~~[The Commission shall continue in office, as designated by the Governor at the time of appointment, through the last day of the second, fourth and sixth calendar years respectively following the effective date of this Act. The successors of members initially appointed]~~ shall be appointed for staggered terms of six (6) years ~~[in the same manner as the members originally appointed under this Act, except that any person appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed, shall be appointed only for the remainder of such term]~~. Each member shall serve until the appointment and qualification of his successor. Each member of the Commission is entitled to a per diem as set by legislative appropriation for each day that the member engages in the business of the Commission. A member may not receive any compensation for travel expenses, including expenses for meals and lodging, other than transportation expenses. A member is entitled to compensation for transportation expenses as prescribed by the general appropriations act. ~~[Each member shall serve without pay, except he shall be paid the sum of Twenty Five Dollars (\$25) per diem for regular and called meetings of the Commission and shall be reimbursed for actual and necessary expenses incurred by him and authorized by the Commission.]~~

(b-1) The Veterans Affairs Commission of the State of Texas is subject to the Texas Sunset Act, as amended (Article 5429k, Vernon's Texas Civil Statutes); and unless continued in existence as provided by that Act the commission is abolished effective September 1, 1993 ~~[1981]~~. The Commission is

subject to the open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967, as amended (Article 6252-17, Vernon's Texas Civil Statutes), and the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes).

(d) Organization, meeting, reports. The Commission may ~~shall, within thirty (30) days after its appointment, organize, adopt a seal and~~ make such rules and regulations for its administration as it considers ~~may deem~~ necessary ~~[and may from time to time amend such rules and regulations]~~. ~~The [At the organization meeting, the]~~ Commission shall elect from among its members a chairman, a vice-chairman, and a secretary to serve for one (1) year, and annually thereafter shall elect such officers who shall serve until their successors are appointed and qualified. ~~Four (4) [Three (3)]~~ members shall constitute a quorum and no action shall be taken by less than a majority of the Commission. The Commission shall hold regular meetings at least once in every three (3) months. ~~[At the initial meeting, the regular meeting dates and places shall be fixed. Special meetings may be called as provided by the rules and regulations.]~~ The State Auditor shall audit the financial transactions of the Commission during each fiscal year. The Commission shall on or before ~~[about]~~ December 1 ~~[first]~~ of each year make in writing to the Governor and the presiding officer of each house of the Legislature a complete and detailed annual report accounting for all funds received and disbursed by the Commission during the preceding year. ~~[a written report to the Governor giving a summary of its proceedings during the preceding fiscal year and such other information deemed necessary or useful. The fiscal year of the Commission shall conform to the fiscal year of the state.]~~

(i) Powers of Director ~~[and assistants]~~. The Executive Director ~~[, and the assistant directors to be appointed under this Act]~~ shall have power to administer oaths, certify under the seal of the Commission to official acts, take depositions within or without the State of Texas, as now provided by law, and compel the production of pertinent books, accounts, records and documents. The Executive Director or his designee shall develop an intra-agency career ladder program, one part of which shall be the intra-agency posting of all non-entry-level positions for at least 10 days before any public posting. The Executive Director or his designee shall develop a system of annual performance evaluations based on measurable job tasks. All merit pay authorized by the Executive Director must be based on the system established under this subsection.

(m) It is a ground for removal from the Commission if a member:

(1) does not have at the time of appointment the qualifications required by Subsection (b) of this section for appointment to the Commission;

(2) does not maintain during the service on the Commission the qualifications required by Subsection (b) of this section for appointment to the Commission;

(3) violates a prohibition relating to conflict of interest prescribed by Subsection (b) of this section; or

(4) fails to attend at least half of the regularly scheduled Commission meetings held in a calendar year, excluding meetings held while the person was not a member of the Commission.

(n) If a ground for removal of a member from the Commission exists, the Commission's actions during the existence of the ground for removal are not invalid for that reason.

(o) The Commission shall prepare information of consumer interest describing the functions of the Commission and the Commission's procedures by which consumer complaints are filed with and resolved by the Commission. The

Commission shall make the information available to the general public and appropriate state agencies.

SECTION 2. Section 2 and Subsections (g), (h), (j), (k), and (l) of Section 3, Article 5787, Revised Civil Statutes of Texas, 1925, as amended, are repealed.

SECTION 3. (a) A person holding office as a member of the Veterans Affairs Commission on the effective date of this Act continues to hold the office for the term for which the member was originally appointed.

(b) The governor shall appoint a person to fill the new office on the commission. The initial term for this new office expires in 1985.

SECTION 4. (a) This Act takes effect September 1, 1981.

(b) The requirements under Section 3(i), Article 5787, Revised Civil Statutes of Texas, 1925, as amended by this Act, that the executive director of the commission develop an intra-agency career ladder program and a system of annual performance evaluations, shall be implemented before September 1, 1982. The requirement of Section 3(i) that merit pay is to be based on that system shall be implemented before September 1, 1983.

SECTION 5. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The amendment was read.

Senator Williams moved to concur in the House amendment.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Yeas: Andujar, Blake, Brooks, Brown, Caperton, Doggett, Farabee, Glasgow, Harris, Howard, Jones, Kothmann, Leedom, McKnight, Meier, Mengden, Ogg, Parker, Richards, Santiesteban, Sarpalius, Short, Snelson, Traeger, Travis, Truan, Uribe, Vale, Williams, Wilson.

Nays: Mauzy.

SENATE BILL 865 WITH HOUSE AMENDMENTS

Senator Vale called S.B. 865 from the President's table for consideration of the House amendments to the bill.

The President laid the bill and the House amendments before the Senate.

Committee Amendment No. 1 - Benedict

Substitute the following for S.B. 865:

A BILL TO BE ENTITLED AN ACT

relating to the general closed shrimp season in outside water; providing penalties; amending Section 77.061, Parks and Wildlife Code.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 77.061, Parks and Wildlife Code, is amended to read as follows:

"Section 77.061. General Closed Season. (a) Except as specifically provided in this subchapter, no person may catch shrimp in outside water:

"(1) from June 1 to July 15, both dates inclusive, or during a period provided under Section 77.062 of this code, as applicable; or

"(2) extending from the coastline of Texas up to and including seven fathoms in depth from December 16 of each year to February 1 of the following year, both dates inclusive, unless taking sea bobs.

"(b) A person who violates Subdivision (1) of Subsection (a) of this section on conviction is punishable by a fine of not less than \$2,500 nor more than \$5,000 or confinement in the county jail for not less than six months nor more than one year, or both.

"(c) In addition to Subsection (b) of this section, the commercial gulf shrimp boat license of the vessel on which the violation of Subdivision (1) of Subsection (a) of this section is committed shall, upon conviction, be suspended and held by the court of proper jurisdiction for a period of not less than 30 days nor more than 60 days. Furthermore such suspension shall be assessed so as to be in effect during the principal gulf shrimp season from July 15 to December 15.

"(d) Except as provided in this section, the presence of a shrimp trawl (excluding doors) not stored within the confines of the hull of a vessel in outside water during the closed period of Subdivision (1) of Subsection (a) of this section shall be prima facie evidence of a violation of this section.

"(e) Subsection (d) of this section does not apply to licensed commercial gulf shrimp boats within one-fourth mile of jetties when such vessel is in direct transit to open water as provided in Section 77.065, Parks and Wildlife Code.

"(f) Commercial shrimp boats operating within the outside water during the closed season as provided in Subdivision (1) of Subsection (a) of this section shall display its documentation number issued by the U.S. Coast Guard for documented vessels or a registration number issued by a state on the port and starboard sides of the deckhouse or hull and on an appropriate weather deck so as to be clearly visible from enforcement vessels and aircraft. This number shall be permanently attached or painted on the vessel in block Arabic numerals in contrasting color to the background and at least 18 inches in height on vessels over 65 feet in length or at least 10 inches in height for all other vessels."

SECTION 2. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Floor Amendment No. 1 - Benedict

Substitute the following for S.B. 865:

A BILL TO BE ENTITLED
AN ACT

relating to the general closed shrimp season in outside water; providing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 77.061, Parks and Wildlife Code, is amended to read as follows:

Sec. 77.061. GENERAL CLOSED SEASON. (a) Except as specifically provided in this subchapter, no person may catch shrimp in outside water:

(1) from June 1 to July 15, both dates inclusive, or during a period provided under Section 77.062 of this code, as applicable; or

(2) extending from the coastline of Texas up to and including seven fathoms in depth from December 16 of each year to February 1 of the following year, both dates inclusive, unless taking sea bobs.

(b) A person who violates Subsection (a)(1) of this section commits an offense and on conviction is punishable by a fine of not less than \$2,500 nor more than \$5,000, by confinement in the county jail for not less than six months nor more than one year, or by both.

(c) In addition to Subsection (b) of this section, the commercial gulf shrimp boat license of the vessel on which the violation of Subsection (a)(1) of this section is committed shall, on conviction, be suspended and held by the court of proper jurisdiction for a period of not less than 30 nor more than 60 days. Furthermore, the suspension shall be assessed so as to be in effect during the principal gulf shrimp season from July 15 to December 15.

(d) Except as provided in this section, the presence of a shrimp trawl (excluding doors) not stored within the confines of the hull of a vessel in outside water during the closed period provided by Subsection (a)(1) of this section is prima facie evidence of a violation of this section.

(e) Subsection (d) of this section does not apply to a licensed commercial gulf shrimp boat within one-fourth mile of jetties when the vessel is in direct transit to open water to catch white shrimp as provided in Section 77.065, Parks and Wildlife Code, as amended.

(f) A commercial shrimp boat operating in the outside water during the closed season as provided by Subsection (a)(1) of this section shall display its documentation number issued by the United States Coast Guard for documented vessels or a registration number issued by a state on the port and starboard sides of the deckhouse or hull and on an appropriate weather deck so as to be clearly visible from enforcement vessels and aircraft. This number shall be permanently attached or painted on the vessel in block Arabic numerals in contrasting color to the background and at least 18 inches in height on vessels over 65 feet in length or at least 10 inches in height for all other vessels.

SECTION 2. Section 77.020(b), Parks and Wildlife Code, as amended, is amended to read as follows:

(b) A person who violates Section 77.011, 77.013, 77.016, 77.017, 77.018, 77.019, 77.047, ~~77.061,~~ 77.063, 77.064, 77.065, 77.066, 77.067, 77.068, 77.069, 77.070, 77.081, 77.082, 77.085, 77.086, 77.087, 77.088, 77.089, 77.090, 77.091, 77.092, 77.093, 77.095(a), 77.096, 77.097, 77.098, or 77.099 of this code is guilty of a misdemeanor and on conviction is punishable:

(1) by a fine of \$200 for the first offense;

(2) by a fine of not less than \$300 nor more than \$700 or confinement in the county jail for not less than 10 days nor more than 60 days or both for the second offense; and

(3) by a fine of not less than \$750 nor more than \$2,500 and confinement in the county jail for not less than 30 days nor more than six months for the third offense.

SECTION 3. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby

suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Floor Amendment No. 2 - Benedict

Amend S.B. 865 on page 3, line 3, by striking "[77.061,]" and substituting "77.061(a)(2).".

The amendments were read.

Senator Vale moved to concur in the House amendments.

The motion prevailed by the following vote: Yeas 31, Nays 0.

SENATE BILL 242 WITH HOUSE AMENDMENT

Senator Kothmann called S.B. 242 from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

Committee Amendment No. 1 - Denton

Substitute the following for S.B. 242:

**A BILL TO BE ENTITLED
AN ACT**

relating to the reporting and investigation of child abuse and to the issuance of certain search warrants.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subsections (a) and (c), Section 34.02, Family Code, as amended, are amended to read as follows:

(a) Nonaccusatory reports reflecting the reporter's belief that a child has been or will be abused or neglected, or has died of abuse or neglect, has violated the compulsory school attendance laws on three or more occasions, or has, on three or more occasions, been voluntarily absent from his home without the consent of his parent or guardian for a substantial length of time or without the intent to return shall be made to any local or state law enforcement agency, and in addition shall be made to:

(1) the Texas [State] Department of Human Resources [Public Welfare]; or

(2) the agency designated by the court to be responsible for the protection of children[-or

[-any local or state law enforcement agency].

(c) All reports received by any local or state law enforcement agency shall be referred to the Texas [State] Department of Human Resources [Public Welfare] or to the agency designated by the court to be responsible for the protection of children. The department or designated agency immediately shall notify the appropriate state or local law enforcement agency of any report it receives, other than from a law enforcement agency, that concerns the suspected abuse or neglect of a child or death of a child from abuse or neglect.

SECTION 2. Chapter 18, Code of Criminal Procedure, 1965, as amended, is amended by adding Article 18.021 to read as follows:

Article 18.021. ISSUANCE OF SEARCH WARRANT TO PHOTOGRAPH INJURED CHILD. (a) A search warrant may be issued to search for and photograph a child who is alleged to be the victim of the offenses of injury to a child as defined by Section 22.04, Penal Code, as amended; rape of a child as defined by Section 21.09, Penal Code, as amended; or sexual abuse of a child as defined by Section 21.10, Penal Code.

(b) The officer executing the warrant may be accompanied by a photographer who is employed by a law enforcement agency and who acts under the direction of the officer executing the warrant. The photographer is entitled to access to the child in the same manner as the officer executing the warrant.

(c) In addition to the requirements of Subdivisions (1) and (4) of Article 18.04 of this code, a warrant issued under this article shall identify, as near as may be, the child to be located and photographed, shall name or describe, as near as may be, the place or thing to be searched, and shall command any peace officer of the proper county to search for and cause the child to be photographed.

(d) After having located and photographed the child, the peace officer executing the warrant shall take possession of the exposed film and deliver it forthwith to the magistrate. The child may not be removed from the premises on which he or she is located except under Section 17.03, Family Code.

(e) A search warrant under this section shall be executed by a peace officer of the same sex as the alleged victim or, if the officer is not of the same sex as the alleged victim, the peace officer must be assisted by a person of the same sex as the alleged victim. The person assisting an officer under this subsection must be acting under the direction of the officer and must be with the alleged victim during the taking of the photographs.

SECTION 3. Article 18.01(a), Code of Criminal Procedure, 1965, as amended, is amended to read as follows:

(a) A "search warrant" is a written order, issued by a magistrate and directed to a peace officer, commanding him to search for any property or thing and to seize the same and bring it before such magistrate or commanding him to search for and photograph a child and to deliver to the magistrate any of the film exposed pursuant to the order.

SECTION 4. Article 18.01, Code of Criminal Procedure, 1965, as amended, is amended by adding Sections (f) and (g) to read as follows:

(f) A search warrant may not be issued pursuant to Article 18.021 of this code unless the sworn affidavit required by Subsection (b) of this article sets forth sufficient facts to establish probable cause:

- (1) that a specific offense has been committed;
- (2) that a specifically described person has been a victim of the offense;
- (3) that evidence of the offense or evidence that a particular person committed the offense can be detected by photographic means; and
- (4) that the person to be searched for and photographed is located at the particular place to be searched.

SECTION 5. This Act takes effect September 1, 1981.

SECTION 6. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The amendment was read.

Senator Kothmann moved to concur in the House amendment.

The motion prevailed.

SENATE BILL 913 WITH HOUSE AMENDMENT

Senator Harris called **S.B. 913** from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

Committee Amendment No. 1 - Simpson

Substitute the following for **S.B. 913**:

**A BILL TO BE ENTITLED
AN ACT**

prescribing requirements for the computation of reserves for life insurance policies and annuity and pure endowment contracts and prescribing requirements for the computation of nonforfeiture benefits and cash surrender values for life insurance policies; amending the Insurance Code, as amended, by amending Article 3.28, the Standard Valuation Law, and Article 3.44a, the Standard Non-forfeiture Law.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Article 3.28 of the Insurance Code, as amended, is amended as follows:

“Article 3.28. Standard Valuation Law

“Title

“Section 1. This Article shall be known as the Standard Valuation Law.

“Reserve Valuation

“~~[Valuation of reserve liabilities for life policies
and endowment contracts]~~

“Section 2. The State Board of Insurance shall annually value, or cause to be valued, the reserve liabilities (hereinafter called reserves) for all outstanding life insurance policies and annuity and pure endowment contracts of every life insurance company doing business in this state, ~~[except that in the case of an alien company, such valuation shall be limited to its United States business,]~~ and may certify the amount of any such reserves, specifying the mortality table or tables, rate or rates of interest, and methods (net level premium method or other) used in the calculation of such reserves. In calculating such reserves, the Board may use group methods and approximate averages for fractions of a year or otherwise. In lieu of the valuation of the reserves herein required of any foreign or alien company, the Board may accept any valuation made, or caused to be made, by the insurance supervisory official of any state or other jurisdiction when such valuation complies with the minimum standard herein provided and if the official of such state or jurisdiction accepts as sufficient and valid for all legal purposes the certificate of valuation of the State Board of Insurance when such certificate states the valuation to have been made in a specified manner according to which the aggregate reserves would be at least as large as if they had been computed in the manner prescribed by the law of that state or jurisdiction.

“Computation of Minimum Standard

“Section 3. The minimum standard for the valuation of all such policies and contracts issued prior to the operative date of Article 3.44a (the Standard Nonforfeiture Law for Life Insurance) shall be that provided in Section 12 of this article. Except as otherwise provided in Sections 4 and 5 of this article, the

minimum standard for the valuation of all such policies and contracts issued on or after the operative date of Article 3.44a (the Standard Nonforfeiture Law for Life Insurance) shall be the commissioners reserve valuation methods defined in Sections 6, 7, and 10 of this article, three and one-half per cent (3-1/2%) interest; in the case of policies and contracts, other than annuity and pure endowment contracts, issued on or after June 14, 1973, four per cent (4%) interest for such policies issued prior to August 29, 1977; or five and one-half per cent (5-1/2%) interest for single premium life insurance policies and four and one-half per cent (4-1/2%) interest for all other such policies issued on and after August 29, 1977, and the following tables:

“(a) For all ordinary policies of life insurance issued on the standard basis, excluding any disability and accidental death benefits in such policies, the Commissioners 1941 Standard Ordinary Mortality Table for such policies issued prior to the operative date of Section 6 of the Standard Nonforfeiture Law for Life Insurance, as amended, the Commissioners 1958 Standard Ordinary Mortality Table for such policies issued on or after the operative date of Section 6 of the Standard Nonforfeiture Law for Life Insurance, as amended, and prior to the operative date of Section 8 of the Standard Nonforfeiture Law for Life Insurance, as amended, provided that for any category of such policies issued on female risks, all modified net premiums and present values referred to in this Act may be calculated according to an age not more than three years younger than the actual age of the insured for policies issued prior to August 29, 1977, and not more than six years younger than the actual age of the insured for policies issued on and after August 29, 1977; and for such policies issued on or after the operative date of Section 8 of the Standard Nonforfeiture Law for Life Insurance, as amended, (i) the Commissioners 1980 Standard Ordinary Mortality Table, or (ii) at the election of the company for any one or more specified plans of life insurance, the Commissioners 1980 Standard Ordinary Mortality Table with Ten-Year Select Mortality Factors, or (iii) any ordinary mortality table adopted after 1980 by the National Association of Insurance Commissioners that is approved by regulation promulgated by the State Board of Insurance for use in determining the minimum standard valuation for such policies.

“(b) For all industrial life insurance policies issued on the standard basis, excluding any disability and accidental death benefits in such policies, the 1941 Standard Industrial Mortality Table for such policies issued prior to the operative date of Section 7 of the Standard Nonforfeiture Law for Life Insurance, as amended, and for such policies issued on or after such operative date, the Commissioners 1961 Standard Industrial Mortality Table or any industrial mortality table adopted after 1980 by the National Association of Insurance Commissioners that is approved by regulation promulgated by the State Board of Insurance for use in determining the minimum standard of valuation for such policies.

“(c) For individual annuity and pure endowment contracts, excluding any disability and accidental death benefits in such policies, the 1937 Standard Annuity Mortality Table, or, at the option of the company, the Annuity Mortality Table for 1949, Ultimate, or any modification of either of these tables approved by the State Board of Insurance.

“(d) For group annuity and pure endowment contracts, excluding any disability and accidental death benefits in such policies, the Group Annuity Mortality Table for 1951, any modification of such table approved by the State Board of Insurance, or, at the option of the company, any of the tables or modifications of tables specified for individual annuity and pure endowment contracts.

“(e) For total and permanent disability benefits in or supplementary to ordinary policies or contracts, for policies or contracts issued on or after January 1, 1966, the tables of Period 2 disablement rates and the 1930 to 1950 termination rates of the 1952 Disability Study of the Society of Actuaries, with due regard to the type of benefit, or any tables of disablement rates and termination rates adopted after 1980 by the National Association of Insurance Commissioners that are approved by regulation promulgated by the State Board of Insurance for use in determining the minimum standard of valuation for such policies; for policies or contracts issued on or after January 1, 1961, and prior to January 1, 1966, either such tables or, at the option of the company, the Class (3) Disability Table (1926); and for policies issued prior to January 1, 1961, the Class (3) Disability Table (1926). Any such table shall, for active lives, be combined with a mortality table permitted for calculating the reserves for life insurance policies.

“(f) For accidental death benefits in or supplementary to policies, for policies issued on or after January 1, 1966, the 1959 Accidental Death Benefits Table or any accidental death benefits table adopted after 1980 by the National Association of Insurance Commissioners that is approved by regulation promulgated by the State Board of Insurance for use in determining the minimum standard of valuation for such policies; for policies issued on or after January 1, 1961, and prior to January 1, 1966, either such table or, at the option of the company, the Inter-Company Double Indemnity Mortality Table; and for policies issued prior to January 1, 1961, the Inter-Company Double Indemnity Mortality Table. Either table shall be combined with a mortality table permitted for calculating the reserves for life insurance policies.

“(g) For group life insurance, life insurance issued on the substandard basis and other special benefits, such tables as may be approved by the State Board of Insurance.

“[Terms and rules in computing reserve liability on policies and contracts issued prior to operative date of Standard Non-forfeiture Law

“[Section 3. This Section shall apply only to those policies and contracts issued prior to the operative date of Article 3.44a (the Standard Non-forfeiture Law). The reserve liability of all such policies and contracts shall be computed in accordance with their terms and the following rules:

“(1) As respects policies issued prior to the first day of January, 1910, the computation shall be on the basis of the American Experience Table of Mortality and four and one half per cent (4 1/2%) interest per annum.

“(2) As respects policies issued after the 31st day of December, 1909, and prior to January 1, 1948, the computation shall be on the basis of the Actuaries or Combined Experience Table of Mortality with four per cent (4%) interest per annum, if the interest rate guaranteed in the policy is four per cent (4%) per annum or higher. If any such policies were issued upon a reserve basis of an interest rate lower than four per cent (4%) per annum, then the computation shall be made on the basis of the American Experience Table of Mortality with interest at such lower specified rate.

“(3) As respects policies issued after the 31st day of December, 1947, the computation shall be on the basis of the mortality table and interest rate specified in the respective policies, provided that (1) the specified rate of interest shall not exceed three and one half per cent (3 1/2%) per annum; (2) the specified table for policies other than policies of industrial life insurance shall be the American Experience Table of Mortality, the American Men Ultimate Table of Mortality, the Commissioners 1941 Standard Ordinary Mortality Table, or, as respects policies issued after the 31st day of December,

1959, the Commissioners 1958 Standard Ordinary Mortality Table; and (3) the specified table for policies of industrial life insurance shall be the American Experience Table of Mortality, the Standard Industrial Mortality Table, the Sub-Standard Industrial Mortality Table, the 1941 Standard Industrial Mortality Table, or the 1941 Sub-Standard Industrial Mortality Table, or, as respects policies issued after the 31st day of December, 1963, the Commissioners 1961 Standard Industrial Mortality Table.

"[(4) As respects policies on female risks issued after the 31st day of December, 1959, other than policies of industrial life insurance, computation shall be based on any mortality table and rate of interest permitted under the preceding paragraph (3) and specified in the respective policies, but may at the option of the company be based on an age not more than three (3) years younger than the actual age of the insured.

"[(5) Except as otherwise provided in Subsection (b) of Section 4 with respect to coverages purchased on or after the operative date of such subsection under group annuity and pure endowment contracts, as respects policies issued on substandard risks and annuity contracts and contracts or policies for disability benefits and accidental death benefits, the computation shall be on the basis of the standards and methods adopted by the respective companies and approved by the State Board of Insurance.

"[(6) The reserve values of all policies of group insurance issued prior to May 15, 1947, shall be computed upon the basis of the American Men Ultimate Table of Mortality with interest at the rate of three per cent (3%) or three and one half per cent (3 1/2%) per annum as provided in such policies. The reserve values of all policies of group insurance issued on and subsequent to May 15, 1947, and prior to January 1, 1961, shall be computed upon the basis of either the American Men Ultimate Table of Mortality or the Commissioners 1941 Standard Ordinary Mortality Table with interest at a rate not in excess of three and one half per cent (3 1/2%) per annum as provided in such policies. The reserve values of all policies of group insurance issued on and subsequent to January 1, 1961, shall be computed on the basis of an interest rate not exceeding three and one half per cent (3 1/2%) per annum and such mortality table as shall be adopted by the company with the approval of the State Board of Insurance.]

"Computation of Minimum Standard for Annuities

"[Minimum standard for valuation of policies and contracts]

"Section 4. Except as provided in Section 5 of this article, the [(a) This Section shall apply to only those policies and contracts issued on or after the operative date of Article 3.44a (the Standard Non-forfeiture Law), except as otherwise provided in Subsection (b) of this Section for coverages purchased on or after the operative date of such subsection under group annuity and pure endowment contracts issued prior to such operative date. Except as otherwise provided in Subsection (b) of this Section, the minimum standard for the valuation of all such policies and contracts shall be the commissioners reserve valuation method defined in Section 5, three and one half per cent (3 1/2%) interest for policies and contracts issued prior to June 14, 1973, four per cent (4%) interest for policies and contracts, except annuity and pure endowment contracts, issued on or after June 14, 1973, and prior to the effective date of this amendatory Act of 1977, five and one half per cent (5 1/2%) interest for single premium life insurance policies, and four and one half per cent (4 1/2%) interest for all other such policies and contracts, except annuity and pure endowment contracts, issued on and after the effective date of this amendatory Act of 1977, and the following tables:

~~"[(1) For all ordinary policies of life insurance issued on the standard basis, excluding any disability and accidental death benefits in such policies, the Commissioners 1941 Standard Ordinary Mortality Table for such policies issued prior to the operative date of Section 6 of Article 3.44a (the Standard Non-forfeiture Law) as amended, and the Commissioners 1958 Standard Ordinary Mortality Table for such policies issued on or after such operative date; provided that for any category of such policies issued on female risks all modified net premiums and present values referred to in this Article may be calculated according to an age not more than three (3) years younger than the actual age of the insured for policies issued prior to the effective date of this amendatory Act of 1977 and not more than six (6) years younger than the actual age of the insured for policies issued on and after the effective date of this amendatory Act of 1977.~~

~~"[(2) For all industrial life insurance policies issued on the standard basis, excluding any disability and accidental death benefits in such policies, the 1941 Standard Industrial Mortality Table for such policies issued prior to the operative date of Section 7 of Article 3.44a (the Standard Non-forfeiture Law) as amended, and the Commissioners 1961 Standard Industrial Mortality Table for such policies issued on or after such operative date.~~

~~"[(3) For individual annuity and pure endowment contracts, excluding any disability and accidental death benefits in such policies, the 1937 Standard Annuity Mortality Table or, at the option of the company, the Annuity Mortality Table for 1949, Ultimate, or any modification of either of these tables approved by the State Board of Insurance.~~

~~"[(4) For group annuity and pure endowment contracts, excluding any disability and accidental death benefits in such policies, the Group Annuity Mortality Table for 1951, any modification of such table approved by the State Board of Insurance, or at the option of the Company, any of the tables or modifications of tables specified for individual annuity and pure endowment contracts.~~

~~"[(5) For total and permanent disability benefits in or supplementary to ordinary policies or contracts, for policies or contracts issued on or after January 1, 1974, the tables of Period 2 disablement rates and the 1930 to 1950 termination rates of the 1952 Disability Study of the Society of Actuaries, with due regard to the type of benefit; for policies or contracts issued on or after the operative date of Article 3.44a, and prior to January 1, 1974, either such tables or, at the option of the company, the Class (3) Disability Table (1926), or such other basis as may be approved by the State Board of Insurance. Any such table shall, for active lives, be combined with a mortality table permitted for calculating the reserves for life insurance policies.~~

~~"[(6) For accidental death benefits in or supplementary to policies, for policies issued on or after January 1, 1974, the 1959 Accidental Death Benefits Table; for policies issued on or after the operative date of Article 3.44a, and prior to January 1, 1974, either such table or, at the option of the Company, the Inter-Company Double Indemnity Mortality Table, or such other basis as may be approved by the State Board of Insurance. Either table shall be combined with a mortality table permitted for calculating the reserves for life insurance policies.~~

~~"[(7) For group life insurance, life insurance issued on the substandard basis and other special benefits, such tables as may be approved by the State Board of Insurance.~~

~~"[(b) The] minimum standard for the valuation of all individual annuity and pure endowment contracts issued on or after the operative date of this Section 4 [(b)], as defined herein, and for all annuities and pure endowments~~

purchased on or after such operative date under group annuity and pure endowment contracts [~~regardless of the issue date of such contracts,~~] shall be the commissioners reserve valuation methods [~~method~~] defined in Sections 6 and 7 of this article [~~Section 5(A) or 5(B)~~] and the following tables and interest rates:

"(a) [(4)] For individual annuity and pure endowment contracts issued prior to August 29, 1977 [~~the effective date of this amendatory Act of 1977~~], excluding any disability and accidental death benefits in such contracts, the 1971 Individual Annuity Mortality Table, or any modification of this table approved by the State Board of Insurance, and six per cent (6%) interest for single premium immediate annuity contracts, and four per cent (4%) interest for all other individual annuity and pure endowment contracts.

"(b) [(2)] For individual single premium immediate annuity contracts issued on or after August 29, 1977 [~~the effective date of this amendatory Act of 1977 and prior to January 1, 1990~~], excluding any disability and accidental death benefits in such contracts, the 1971 Individual Annuity Mortality Table or any individual annuity mortality table adopted after 1980 by the National Association of Insurance Commissioners that is approved by regulation promulgated by the State Board of Insurance for use in determining the minimum standard of valuation for such contracts, or any modification of these tables [~~this table~~] approved by the State Board of Insurance, and seven and one-half per cent (7-1/2%) interest. [~~For such contracts issued on or after January 1, 1990, excluding any disability and accidental death benefits in such contracts, the 1971 Individual Annuity Mortality Table, or any modification of this table approved by the State Board of Insurance, and six per cent (6%) interest.~~]

"(c) [(3)] For individual annuity and pure endowment contracts issued on or after August 29, 1977 [~~the effective date of this amendatory Act of 1977~~], other than single premium immediate annuity contracts, excluding any disability and accidental death benefits in such contracts, the 1971 Individual Annuity Mortality Table or any individual annuity mortality table adopted after 1980 by the National Association of Insurance Commissioners that is approved by regulation promulgated by the State Board of Insurance for use in determining the minimum standard of valuation for such contracts, or any modification of these tables [~~this table~~] approved by the State Board of Insurance, and five and one-half per cent (5-1/2%) interest for single premium deferred annuity and pure endowment contracts and four and one-half per cent (4-1/2%) interest for all other such individual annuity and pure endowment contracts.

"(d) [(4)] For all annuities and pure endowments purchased prior to August 29, 1977, [~~the effective date of this amendatory Act of 1977~~] under group annuity and pure endowment contracts, excluding any disability and accidental death benefits purchased under such contracts, the 1971 Group Annuity Mortality Table, or any modification of this table approved by the State Board of Insurance, and six per cent (6%) interest.

"(e) [(5)] For all annuities and pure endowments purchased on or after August 29, 1977 [~~the effective date of this amendatory Act of 1977 and prior to January 1, 1990~~], under group annuity and pure endowment contracts, excluding any disability and accidental death benefits purchased under such contracts, the 1971 Group Annuity Mortality Table or any group annuity mortality table adopted after 1980 by the National Association of Insurance Commissioners that is approved by regulation promulgated by the State Board of Insurance for use in determining the minimum standard of valuation for such annuities and pure endowments, or any modification of these tables [~~this table~~] approved by the State Board of Insurance, and seven and one-half per cent (7-1/2%) interest.

~~“[For all annuities and pure endowments purchased on or after January 1, 1990, under group annuity and pure endowment contracts, excluding any disability and accidental death benefits purchased under such contracts, the 1971 Group Annuity Mortality Table, or any modification of this table approved by the State Board of Insurance, and six per cent (6%) interest.]~~

“After June 14, 1973, any company may file with the State Board of Insurance a written notice of its election to comply with the provisions of this section ~~[subsection]~~ after a specified date before January 1, 1979, which shall be the operative date of this section ~~[subsection]~~ for such company; provided, a company may elect a different operative date for individual annuity and pure endowment contracts from that elected for group annuity and pure endowment contracts. If a company makes no such election, the operative date of this section ~~[Subsection (b)]~~ for such company shall be January 1, 1979.

“Computation of Minimum Standard by Calendar Year of Issue

“Section 5. (a) Applicability of this section

“(1) The calendar year statutory valuation interest rates as defined in this Section shall be the interest rates used in determining the minimum standard for valuation of:

“(A) all life insurance policies issued in a particular calendar year on or after the operative date of Section 8 of the Standard Nonforfeiture Law for Life Insurance;

“(B) all individual annuity and pure endowment contracts issued in a particular calendar year on or after January 1, 1982;

“(C) all annuities and pure endowments purchased in a particular calendar year on or after January 1, 1982, under group annuity and pure endowment contracts; and

“(D) the net increase, if any, in a particular calendar year after January 1, 1982, in amounts held under guaranteed interest contracts.

“(b) Calendar Year Statutory Valuation Interest Rates

“(1) The calendar year statutory valuation interest rates, ‘I,’ shall be determined as follows and the results rounded to the nearer one-fourth of one per cent (1/4 of 1%):

“(A) For life insurance,

$$I = \frac{.03 + W_1 (R_1 - .03)}{1} + \frac{W_2 (R_2 - .09)}{2}$$

“(B) For single premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and from guaranteed interest contracts with cash settlement options,

$$I = .03 + W (R - .03)$$

where R_1 is the lesser of R and .09,

R_2 is the greater of R and .09,

R is the reference interest rate defined in this section, and

W is the weighting factor defined in this section.

"(C) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on an issue year basis, except as stated in Paragraph (B) of Subdivision (1) of Subsection (b) of this section, the formula for life insurance stated in Paragraph (A) of Subdivision (1) of Subsection (b) of this section shall apply to annuities and guaranteed interest contracts with guarantee durations in excess of 10 years and the formula for single premium immediate annuities stated in Paragraph (B) of Subdivision (1) of Subsection (b) of this section shall apply to annuities and guaranteed interest contracts with guarantee duration of 10 years or less.

"(D) For other annuities with no cash settlement options and for guaranteed interest contracts with no cash settlement options, the formula for single premium immediate annuities stated in Paragraph (B) of Subdivision (1) of Subsection (b) of this section shall apply.

"(E) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a change in fund basis, the formula for single premium immediate annuities stated in Paragraph (B) of Subdivision (1) of Subsection (b) of this section shall apply.

"(2) However, if the calendar year statutory valuation interest rate for any life insurance policies issued in any calendar year determined without reference to this sentence differs from the corresponding actual rate for similar policies issued in the immediately preceding calendar year by less than one-half of one percent (1/2 of 1%), the calendar year statutory valuation interest rate for such life insurance policies shall be equal to the corresponding actual rate for the immediately preceding calendar year. For purposes of applying the immediately preceding sentence, the calendar year statutory valuation interest rate for life insurance policies issued in a calendar year shall be determined for 1980 (using the reference interest rate defined for 1979) and shall be determined for each subsequent calendar year regardless of when Section 8 of the Standard Nonforfeiture Law for Life Insurance becomes operative.

"(c) Weighting Factors

"(1) The weighting factors referred to in the formulas stated above are given in the following tables:

"(A) Weighting Factors for Life Insurance:

<u>Guarantee Duration (Years)</u>	<u>Weighting Factors</u>
<u>10 or less</u>	<u>.50</u>
<u>More than 10, but not more than 20</u>	<u>.45</u>
<u>More than 20</u>	<u>.35</u>

For life insurance, the guarantee duration is the maximum number of years the life insurance can remain in force on a basis guaranteed in the policy or under options to convert to plans of life insurance with premium rates or nonforfeiture values or both which are guaranteed in the original policy;

"(B) Weighting factor for single premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and guaranteed interest contracts with cash settlement options:

.80

“(C) Weighting factors for other annuities and for guaranteed interest contracts, except as stated in Paragraph (B) of Subdivision (1) of Subsection (c) of this section, shall be as specified in tables (i), (ii), and (iii) below, according to the rules and definitions in (iv), (v), and (vi) below:

“(i) For annuities and guaranteed interest contracts valued on an issue year basis:

<u>Guarantee Duration (Years)</u>	<u>Weighting Factor for Plan Type</u>		
	<u>A</u>	<u>B</u>	<u>C</u>
<u>5 or less:</u>	<u>.80</u>	<u>.60</u>	<u>.50</u>
<u>More than 5, but not more than 10:</u>	<u>.75</u>	<u>.60</u>	<u>.50</u>
<u>More than 10, but not more than 20:</u>	<u>.65</u>	<u>.50</u>	<u>.45</u>
<u>More than 20:</u>	<u>.45</u>	<u>.35</u>	<u>.35</u>
	<u>Plan Type</u>		
	<u>A</u>	<u>B</u>	<u>C</u>

“(ii) For annuities and guaranteed interest contracts valued on a change in fund basis, the factors shown in (i) above increased by:

<u>Plan Type</u>
<u>A B C</u>

“(iii) For annuities and guaranteed interest contracts valued on an issue year basis (other than those with no cash settlement options) which do not guarantee interest on considerations received more than one year after issue or purchase and for annuities and guaranteed interest contracts valued on a change in fund basis which do not guarantee interest rates on considerations received more than 12 months beyond the valuation date, the factors shown in (i) or derived in (ii) increased by: .05 .05 .05

“(iv) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, the guarantee duration is the number of years for which the contract guarantees interest rates in excess of the calendar year statutory valuation interest rate for life insurance policies with guarantee duration in excess of 20 years. For other annuities with no cash settlement options and for guaranteed interest contracts with no cash settlement options, the guarantee duration is the number of years from the date of issue or date of purchase to the date annuity benefits are scheduled to commence.

“(v) Plan type as used in the above tables (i), (ii), and (iii) is defined as follows:

“Plan Type A: At any time policyholder may withdraw funds only (1) with an adjustment to reflect changes in interest rates or asset values since receipt of funds by the insurance company, or (2) without such adjustment but in installments over five years or more, or (3) as an immediate life annuity, or (4) no withdrawal permitted.

“Plan Type B: Before expiration of the interest rate guarantee, the policyholder may withdraw funds only (1) with an adjustment to reflect changes in interest rates or asset values since receipt of the funds by the insurance

company, or (2) without such adjustment but in installments over five years or more, or (3) no withdrawal permitted. At the end of interest rate guarantee, funds may be withdrawn without such adjustment in a single sum or installments over less than five years.

"Plan Type C: Policyholder may withdraw funds before expiration of interest rate guarantee in a single sum or installments over less than five years either (1) without adjustment to reflect changes in interest rates or asset values since receipt of the funds by the insurance company, or (2) subject only to a fixed surrender charge stipulated in the contract as a percentage of the fund.

"(vi) A company may elect to value guaranteed interest contracts with cash settlement options and annuities with cash settlement options on either an issue year basis or on a change in fund basis. Guaranteed interest contracts with no cash settlement options and other annuities with no cash settlement options must be valued on an issue year basis. As used in this section, an issue year basis of valuation refers to a valuation basis under which the interest rate used to determine the minimum valuation standard for the entire duration of the annuity or guaranteed interest contract is the calendar year valuation interest rate for the year of issue or year of purchase of the annuity or guaranteed interest contract, and the change in fund basis of valuation refers to a valuation basis under which the interest rate used to determine the minimum valuation standard applicable to each change in the fund held under the annuity or guaranteed interest contract is the calendar year valuation interest rate for the year of the change in the fund.

"(d) Reference Interest Rate

"(1) Except as provided in Subsection (e) of this section, the reference interest rate referred to in Subsection (b) of this section shall be defined as follows:

"(A) For all life insurance, the lesser of the average over a period of 36 months and the average over a period of 12 months, ending on June 30 of the calendar year next preceding the year of issue, of Moody's Corporate Bond Yield Average - Monthly Average Corporates, as published by Moody's Investors Service, Inc.

"(B) For single premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, the average over a period of 12 months, ending on June 30 of the calendar year of issue or year of purchase, of Moody's Corporate Bond Yield Average - Monthly Average Corporates, as published by Moody's Investors Service, Inc.

"(C) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a year of issue basis, except as stated in Paragraph (B) of Subdivision (1) of Subsection (d) of this section, with guarantee duration in excess of 10 years, the lesser of the average over a period of 36 months and the average over a period of 12 months, ending on June 30 of the calendar year of issue or purchase, of Moody's Corporate Bond Yield Average - Monthly Average Corporates, as published by Moody's Investors Service, Inc.

"(D) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a year of issue basis, except as stated in Paragraph (B) of Subdivision (1) of Subsection (d) of this section, with guarantee duration of 10 years or less, the average over a period of 12 months, ending on June 30 of the calendar year of issue or purchase, of Moody's Corporate Bond Yield Average - Monthly Average Corporates, as published by Moody's Investors Service, Inc.

“(E) For other annuities with no cash settlement options and for guaranteed interest contracts with no cash settlement options, the average over a period of 12 months, ending on June 30 of the calendar year of issue or purchase, of Moody’s Corporate Bond Yield Average - Monthly Average Corporates, as published by Moody’s Investors Service, Inc.

“(F) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a change in fund basis, except as stated in Paragraph (B) of Subdivision (1) of Subsection (d) of this section, the average over a period of 12 months, ending on June 30 of the calendar year of the change in the fund, of Moody’s Corporate Bond Yield Average - Monthly Average Corporates, as published by Moody’s Investors Service, Inc.

“(e) State Board of Insurance Promulgation of Definitions of Reference Interest Rate

“The State Board of Insurance shall, not less than annually, determine whether the definition of reference interest rates as specified in Subsection (d) of this section continues to be a reasonably accurate approximation of the average yield achieved from purchases in the United States in publicly quoted markets of investment grade fixed term and fixed interest corporate obligations for the times specified in such subsection and shall, if it determines that such definition is no longer such reasonably accurate approximation, promulgate rules in the manner specified in the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon’s Texas Civil Statutes), to adopt such alternative methods as are appropriate to achieve such purpose.

“Commissioners Reserve Valuation Method

~~“[Reserves for life insurance and endowment benefits of policies providing uniform amount of insurance and requiring payment of uniform premiums]~~

“Section 6. [Section 5—(A)] Except as otherwise provided in Sections 7 and 10 of this article [Section 5 (B)], reserves according to the commissioners reserve valuation method, for the life insurance and endowment benefits of policies providing for a uniform amount of insurance and requiring the payment of uniform premiums shall be the excess, if any, of the present value, at the date of valuation, of such future guaranteed benefits provided for by such policies, over the then present value of any future modified net premiums therefor. The modified net premiums for any such policy shall be such uniform percentage of the respective contract premiums for such benefits that the present value, at the date of issue of the policy, of all such modified net premiums shall be equal to the sum of the then present value of such benefits provided for by the policy and the excess of (a) over (b), as follows:

“(a) A net level annual premium equal to the present value, at the date of issue, of such benefits provided for after the first policy year, divided by the present value, at the date of issue, of an annuity of one per annum payable on the first and each subsequent anniversary of such policy on which a premium falls due; provided, however, that such net level annual premium shall not exceed the net level annual premium on the nineteen year premium whole life plan for insurance of the same amount at an age one year higher than the age at issue of such policy.

“(b) A net one year term premium for such benefits provided for in the first policy year.

“Provided that for any life insurance policy issued on or after January 1, 1985, for which the contract premium in the first policy year exceeds that of the second year and for which no comparable additional benefit is provided in the first year for such excess and which provides an endowment benefit or a cash

surrender value or a combination thereof in an amount greater than such excess premium, the reserve according to the commissioners reserve valuation method as of any policy anniversary occurring on or before the assumed ending date defined herein as the first policy anniversary on which the sum of any endowment benefit and any cash surrender value then available is greater than such excess premium shall, except as otherwise provided in Section 10 of this article, be the greater of the reserve as of such policy anniversary calculated as previously described in this Section 6 and the reserve as of such policy anniversary calculated as previously described in this Section 6 but with (i) the value defined in Subsection (a) of Section 6 of this article being reduced by fifteen per cent (15%) of the amount of such excess first year premium, (ii) all present values of benefits and premiums being determined without reference to premiums or benefits provided for by the policy after the assumed ending date, (iii) the policy being assumed to mature on such date as an endowment, and (iv) the cash surrender value provided on such date being considered as an endowment benefit. In making the above comparison the mortality and interest bases stated in Sections 3 and 5 of this article shall be used.

"Reserves according to the commissioners reserve valuation method for: (1) life insurance policies providing for a varying amount of insurance or requiring the payment of varying premiums; ~~[-]~~ (2) group annuity and pure endowment contracts purchased under a retirement plan or plan of deferred compensation, established or maintained by an employer (including a partnership or sole proprietorship) or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under Section 408 of the Internal Revenue Code, as now or hereafter amended; ~~[of 1954, as amended (Title 26, United States Code, as amended)]~~; (3) disability and accidental death benefits in all policies and contracts; ~~[-]~~ and (4) all other benefits, except life insurance and endowment benefits in life insurance policies and benefits provided by all other annuity and pure endowment contracts; ~~[-]~~ shall be calculated by a method consistent with the principles of the preceding paragraphs of this section ~~[paragraph, except that any extra premiums charged because of impairments or special hazards shall be disregarded in the determination of modified net premiums. Such impairments and special hazards may also be disregarded in determining present value of benefits]~~.

"Commissioners Reserve Valuation Method -
Annuity and Pure Endowment Benefits

"Section 7. ~~[(B)]~~ This section ~~[subsection]~~ shall apply to all annuity and pure endowment contracts other than group annuity and pure endowment contracts purchased under a retirement plan or plan of deferred compensation, established or maintained by an employer (including a partnership or sole proprietorship) or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under Section 408 of the Internal Revenue Code, as now or hereafter amended.

"Reserves according to the commissioners annuity reserve ~~[valuation]~~ method for benefits under annuity or ~~[and]~~ pure endowment contracts, excluding any disability and accidental death benefits in such contracts, shall be the greatest of the respective excesses of the present values, at the date of valuation, of the future guaranteed benefits, including guaranteed nonforfeiture ~~[non-forfeiture]~~ benefits, provided for by such contracts at the end of each respective contract year, over the present value, at the date of valuation, of any future valuation considerations derived from future gross considerations, required by the terms of such contract, that become payable prior to the end of such respective contract year. The future guaranteed benefits shall be determined by

using the mortality table, if any, and the interest rate or rates specified in such contracts for determining guaranteed benefits. The valuation considerations are the portions of the respective gross considerations applied under the terms of such contracts to determine nonforfeiture ~~[non-forfeiture]~~ values.

"Minimum Reserves

~~"[Aggregate reserves for all life policies; minimum amount]~~

"Section 8 [6]. In no event shall a company's aggregate reserves for all life insurance policies, excluding disability and accidental death benefits, issued on or after the operative date of Article 3.44a (the Standard Nonforfeiture ~~[Non-forfeiture]~~ Law for Life Insurance), be less than the aggregate reserves calculated in accordance with the methods set forth in Sections 6, 7, 10, and 11 ~~[5 and 8]~~ and the mortality table or tables and rate or rates of interest used in calculating nonforfeiture ~~[non-forfeiture]~~ benefits for such policies.

"Optional Reserve Calculation

~~[Calculation of reserves for policies and contracts issued prior to operative date of Standard Nonforfeiture Law; standards]~~

"Section 9 [7]. Reserves for all policies and contracts issued prior to the operative date of Article 3.44a (the Standard Nonforfeiture ~~[Non-forfeiture]~~ Law for Life Insurance) may be calculated, at the option of the company, according to any standards which produce greater aggregate reserves for all such policies and contracts than the minimum reserves required by the laws in effect immediately prior to such date.

"Reserves for any category of policies, contracts or benefits as established by the State Board of Insurance, issued on or after the operative date of Article 3.44a (the Standard Nonforfeiture ~~[Non-forfeiture]~~ Law for Life Insurance), may be calculated, at the option of the company, according to any standards which produce greater aggregate reserves for such category than those calculated according to the minimum standard herein provided, but the rate or rates of interest used for policies and contracts, other than annuity and pure endowment contracts, shall not be higher than the corresponding rate or rates of interest used in calculating any nonforfeiture ~~[non-forfeiture]~~ benefits provided ~~[for]~~ therein.

"Any such company which at any time shall have adopted any standard of valuation producing greater aggregate reserves than those calculated according to the minimum standard herein provided may, with the approval of the State Board of Insurance, adopt any lower standard of valuation, but not lower than the minimum herein provided.

"Reserve Calculation -

Valuation Net Premium Exceeding the
Gross Premium Charged

~~"[Deficiency Reserve]~~

"Section 10 [8]. If in any contract year the gross premium charged by any life insurance company on any policy or contract is less than the valuation net premium for the policy or contract calculated by the method used in calculating the reserve thereon but using the minimum valuation standards of mortality and rate of interest, the minimum reserve required for such policy or contract shall be [is] the greater of either the reserve calculated according to the mortality table, rate of interest, and method actually used for such policy or contract, or the reserve calculated by the method actually used for such policy or contract but using the minimum valuation standards of mortality and rate of interest and replacing the valuation net premium by the actual gross premium in each contract year for which the valuation net premium exceeds the actual gross premium. The minimum valuation standards of mortality and rate of interest

referred to in this section are those standards stated in Sections 3 and 5 of this article.

"Provided that for any life insurance policy issued on or after January 1, 1985, for which the gross premium in the first policy year exceeds that of the second year and for which no comparable additional benefit is provided in the first year for such excess and which provides an endowment benefit or a cash surrender value or a combination thereof in an amount greater than such excess premium, the foregoing provisions of this Section 10 shall be applied as if the method actually used in calculating the reserve for such policy were the method described in Section 6 of this article, ignoring the second paragraph of Section 6. The minimum reserve at each policy anniversary of such a policy shall be the greater of the minimum reserve calculated in accordance with Section 6, including the second paragraph of that section, and the minimum reserve calculated in accordance with this Section 10.

"Reserve Calculation — Indeterminate Premium Plans
and Certain Other Plans

"Section 11. In the case of any plan of life insurance which provides for future premium determination, the amounts of which are to be determined by the insurance company based on then estimates of future experience, or in the case of any plan of life insurance or annuity which is of such a nature that the minimum reserves cannot be determined by the methods described in Sections 6, 7, and 10 of this article, the reserves which are held under any such plan must:

"(a) be appropriate in relation to the benefits and the pattern of premiums for that plan, and

"(b) be computed by a method which is consistent with the principles of this Standard Valuation Law, as determined by regulations promulgated by the State Board of Insurance.

"Notwithstanding any other provision in the laws of this state, any policy, contract, or certificate providing life insurance under any such plan must be affirmatively approved by the State Board of Insurance before it can be marketed, issued, delivered, or used in this state.

"Computation of Minimum Standard by
Calendar Year of Issue

"Section 12. This section shall apply only to those policies and contracts issued prior to the operative date of Article 3.44a (the Standard Nonforfeiture Law for Life Insurance). The reserve liability of all such policies and contracts shall be computed in accordance with their terms and the following rules:

"(a) As respects policies issued prior to the first day of January, 1910, the computation shall be on the basis of the American Experience Table of Mortality and four and one-half per cent (4-1/2%) interest per annum.

"(b) As respects policies issued after the 31st day of December, 1909, and prior to January 1, 1948, the computation shall be on the basis of the Actuaries or Combined Experience Table of Mortality with four per cent (4%) interest per annum, if the interest rate guaranteed in the policy is four per cent (4%) per annum or higher. If any such policies were issued upon a reserve basis of an interest rate lower than four per cent (4%) per annum, then the computation shall be made on the basis of the American Experience Table of Mortality with interest at such lower specified rate.

"(c) As respects policies issued after the 31st day of December, 1947, the computation shall be on the basis of the mortality table and interest rate specified in the respective policies, provided that (A) the specified rate of interest shall not exceed three and one-half per cent (3-1/2%) per annum; (B) the specified table for policies other than policies of industrial life insurance shall be the American Experience Table of Mortality, the American Men

Ultimate Table of Mortality, the Commissioners 1941 Standard Ordinary Mortality Table, or, as respects policies issued after the 31st day of December, 1959, the Commissioners 1958 Standard Ordinary Mortality Table; and (C) the specified table for policies of industrial life insurance shall be the American Experience Table of Mortality, the Standard Industrial Mortality Table, the Sub-Standard Industrial Mortality Table, the 1941 Standard Industrial Mortality Table, or the 1941 Sub-Standard Industrial Mortality Table, or, as respects policies issued after the 31st day of December, 1963, the Commissioners 1961 Standard Industrial Mortality Table.

“(d) As respects policies on female risks issued after the 31st day of December, 1959, other than policies of industrial life insurance, computation shall be based on any mortality table and rate of interest permitted under Subsection (c) of Section 12 of this article and specified in the respective policies but may at the option of the company be based on an age not more than three (3) years younger than the actual age of the insured.

“(e) Except as otherwise provided in Section 4 of this article with respect to coverages purchased on or after the operative date of such subsection under group annuity and pure endowment contracts, as respects policies issued on substandard risks and annuity contracts and contracts or policies for disability benefits and accidental death benefits, the computation shall be on the basis of the standards and methods adopted by the respective companies and approved by the State Board of Insurance.

“(f) The reserve values of all policies of group insurance issued prior to May 15, 1947, shall be computed upon the basis of the American Men Ultimate Table of Mortality with interest at the rate of three per cent (3%) or three and one-half per cent (3-1/2%) per annum as provided in such policies. The reserve values of all policies of group insurance issued on and subsequent to May 15, 1947, and prior to January 1, 1961, shall be computed upon the basis of either the American Men Ultimate Table of Mortality or the Commissioners 1941 Standard Ordinary Mortality Table with interest at a rate not in excess of three and one-half per cent (3-1/2%) per annum as provided in such policies. The reserve values of all policies of group insurance issued on and subsequent to January 1, 1961, shall be computed on the basis of an interest rate not exceeding three and one-half per cent (3-1/2%) per annum and such mortality table as shall be adopted by the company with the approval of the State Board of Insurance.

“Repeal of Conflicting Laws

“Section 13. All acts and parts of acts inconsistent with the provisions of this article are hereby repealed.”

SECTION 2. Article 3.44a of the Insurance Code, as amended, is amended as follows:

“Article 3.44a. Standard Nonforfeiture [~~Non-forfeiture~~] Law for Life Insurance

“Title

“Section 1. This Article shall be known as the Standard Nonforfeiture [~~Non-forfeiture~~] Law for Life Insurance.

“Nonforfeiture Benefits

“Section 2. In the case of policies issued on and [~~or~~] after the operative date of this Article (as defined in Section 13 [~~10 of this Article~~]), no policy of life insurance, except as stated in Section 12 [~~9~~], shall be [~~issued or~~] delivered or issued for delivery in this state unless it shall contain in substance the following provisions, or corresponding provisions which in the opinion of the State Board of Insurance are at least as favorable to the defaulting or surrendering policyholder as are the minimum requirements hereinafter specified, and are essentially in compliance with Section 11 of this law:

"(1) That, in the event of default in any premium payment, the company will grant, upon proper request not later than sixty (60) days after the due date of the premium in default, a paid-up nonforfeiture ~~[non-forfeiture]~~ benefit on a plan stipulated in the policy, effective as of such due date, of such amount ~~[value]~~ as may be hereinafter specified. In lieu of such stipulated paid-up nonforfeiture benefit, the company may substitute, upon proper request not later than 60 days after the due date of the premium in default, an actuarially equivalent alternative paid-up nonforfeiture benefit which provides a greater amount or longer period of death benefits or, if applicable, a greater amount or earlier payment of endowment benefits.

"(2) That, upon surrender of the policy within sixty (60) days after the due date of any premium payment in default after premiums have been paid for at least three (3) full years in the case of ordinary insurance or five (5) full years in the case of industrial insurance, the company will pay, in lieu of any paid-up nonforfeiture ~~[non-forfeiture]~~ benefit, a cash surrender value of such amount as may be hereinafter specified.

"(3) That a specified paid-up nonforfeiture ~~[non-forfeiture]~~ benefit shall become effective as specified in the policy unless the person entitled to make such election elects another available option not later than sixty (60) days after the due date of the premium in default.

"(4) That, if the policy shall have become paid-up by completion of all premium payments or if it is continued under any paid-up nonforfeiture ~~[non-forfeiture]~~ benefit which became effective on or after the third policy anniversary in the case of ordinary insurance or the fifth policy anniversary in the case of industrial insurance, the company will pay, upon surrender of the policy within thirty (30) days after any policy anniversary, a cash surrender value of such amount as may be hereinafter specified.

"(5) In the case of policies which cause on a basis guaranteed in the policy unscheduled changes in benefits or premiums, or which provide an option for changes in benefits or premiums other than a change to a new policy, a statement of the mortality table, interest rate, and method used in calculating cash surrender values and the paid-up nonforfeiture benefits available under the policy. In the case of all other policies, a [A] statement of the mortality table and interest rate used in calculating the cash surrender values and the paid-up nonforfeiture ~~[non-forfeiture]~~ benefits available under the policy, together with a table showing the cash surrender value, if any, and paid-up nonforfeiture ~~[non-forfeiture]~~ benefit, if any, available under the policy on each policy anniversary either during the first twenty (20) policy years or during the term of the policy, whichever is shorter, such values and benefits to be calculated upon the assumption that there are no dividends or paid-up additions credited to the policy and that there is no indebtedness to the company on the policy.

"(6) A statement that the cash surrender values and the paid-up nonforfeiture ~~[non-forfeiture]~~ benefits available under the policy are not less than the minimum values and benefits required by or pursuant to the insurance law of the state in which the policy is delivered; an explanation of the manner in which the cash surrender values and the paid-up nonforfeiture ~~[non-forfeiture]~~ benefits are altered by the existence of any paid-up additions credited to the policy or any indebtedness to the company on the policy; if a detailed statement of the method of computation of the values and benefits shown in the policy is not stated therein, a statement that such method of computation has been filed with the insurance supervisory official of the State in which the policy is delivered; and a statement of the method to be used in calculating the cash surrender value and paid-up nonforfeiture ~~[non-forfeiture]~~ benefit available under the policy on any policy anniversary beyond the last anniversary for which such values and benefits are consecutively shown in the policy.

"Any of the foregoing provisions or portions thereof not applicable by reason of the plan of insurance may, to the extent inapplicable, be omitted from the policy.

"The company shall reserve the right to defer the payment of any cash surrender value for a period of six (6) months after demand therefor with surrender of the policy.

"Computation of Cash Surrender Value

"Section 3. Any cash surrender value available under the policy in the event of default in a premium payment due on any policy anniversary, whether or not required by Section 2, shall be an amount not less than the excess, if any, of the present value, on such anniversary, of the future guaranteed benefits which would have been provided for by the policy, including any existing paid-up additions, if there had been no default, over the sum of (a) the then present value of the adjusted premiums as defined in Sections 5, 6, ~~and~~ 7, and 8, corresponding to premiums which would have fallen due on and after such anniversary, and (b) the amount of any indebtedness to the company on the policy. The preceding sentence shall not require any cash surrender value greater than the reserve for the policy calculated as provided by Article 3.28.

"Provided, however, that for any policy issued on or after the operative date of Section 8 as defined therein, which provides supplemental life insurance or annuity benefits at the option of the insured and for an identifiable additional premium by rider or supplemental policy provision, the cash surrender value referred to in the first paragraph of this Section shall be an amount not less than the sum of the cash surrender value as defined in such paragraph for an otherwise similar policy issued at the same age without such rider or supplemental policy provision and the cash surrender value as defined in such paragraph for a policy which provides only the benefits otherwise provided by such rider or supplemental policy provision.

"Provided, further, that for any family policy issued on or after the operative date of Section 8 as defined therein, which defines a primary insured and provides term insurance on the life of the spouse of the primary insured expiring before the spouse's age seventy-one (71), the cash surrender value referred to in the first paragraph of this Section shall be an amount not less than the sum of the cash surrender value as defined in such paragraph for an otherwise similar policy issued at the same age without such term insurance on the life of the spouse and the cash surrender value as defined in such paragraph for a policy which provides only the benefits otherwise provided by such term insurance on the life of the spouse.

"Any cash surrender value available within thirty (30) days after any policy anniversary under any policy paid-up by completion of all premium payments or any policy continued under any paid-up nonforfeiture ~~[non-forfeiture]~~ benefit, whether or not required by Section 2, shall be an amount not less than the present value, on such anniversary, of the future guaranteed benefits provided for by the policy, including any existing paid-up additions, decreased by any ~~an~~ indebtedness to the company on the policy.

"Computation of Paid-Up Nonforfeiture Benefits

"Section 4. Any paid-up nonforfeiture ~~[non-forfeiture]~~ benefit available under the policy in the event of default in a premium payment due on any policy anniversary shall be such that its present value as of such anniversary shall be at least equal to the cash surrender value then provided for by the policy or, if none is provided for, that cash surrender value which would have been required by this Article in the absence of the condition that premiums shall have been paid for at least a specified period.

"Calculation of Adjusted Premiums"[Adjusted premiums]

"Section 5. (a) This Section 5 shall not apply to policies issued on or after the operative date of Section 8 as defined therein. Except as provided in Section 5(c) ~~[the third paragraph of this Section]~~, the adjusted premiums for any policy shall be calculated on an annual basis, or at the option of the company on a fully continuous basis provided such basis is consistent with actual policy provisions and the use of such basis is specified therein, and shall be such uniform percentage of the respective premiums specified in the policy for each policy year, excluding amounts stated in the policy as extra premiums to cover ~~[any extra premiums charged because of]~~ impairments or special hazards, that the present value, at the date of issue of the policy, of all such adjusted premiums shall be equal to the sum of:

"(1) ~~(i)~~ the then present value of the future guaranteed benefits provided for by the policy;

"(2) ~~(ii)~~ two per cent (2%) of the amount of insurance, if the insurance be uniform in amount, or of the equivalent uniform amount, as hereinafter defined, if the amount of insurance varies with duration of the policy;

"(3) ~~(iii)~~ forty per cent (40%) of the adjusted premium for the first policy year;

"(4) ~~(iv)~~ twenty-five per cent (25%) of either the adjusted premium for the first policy year or the adjusted premium for a whole life policy of the same uniform or equivalent uniform amount with uniform premiums for the whole of life issued at the same age for the same amount of insurance, whichever is less. Provided, however, that in applying the percentages specified in (3) ~~(iii)~~ and (4) ~~(iv)~~ above, no adjusted premium shall be deemed to exceed four per cent (4%) of the amount of insurance or uniform amount equivalent thereto. The date of issue of a policy for the purpose of this Section shall be the date as of which the rated age of the insured is determined.

"(b) In the case of a policy providing an amount of insurance varying with duration of the policy, the equivalent uniform amount thereof for the purpose of this Section shall be deemed to be the uniform amount of insurance provided by an otherwise similar policy, containing the same endowment benefit or benefits, if any, issued at the same age and for the same term, the amount of which does not vary with duration and the benefits under which have the same present value at the date of issue as the benefits under the policy; provided, however, that in the case of a policy providing a varying amount of insurance issued on the life of a child under age ten, the equivalent uniform amount may be computed as though the amount of insurance provided by the policy prior to the attainment of age ten were the amount provided by such policy at age ten.

"(c) The adjusted premiums for any policy providing term insurance benefits by rider or supplemental policy provision shall be equal to (1) ~~(a)~~ the adjusted premiums for an otherwise similar policy issued at the same age without such term insurance benefits, increased, during the period for which premiums for such term insurance benefits are payable, by (2) ~~(b)~~ the adjusted premiums for such term insurance, the foregoing items (1) ~~(a)~~ and (2) ~~(b)~~ being calculated separately and as specified in Sections 5(a) and 5(b) ~~[the first two paragraphs of this Section]~~.

"(d) Except as otherwise provided in Sections 6 and 7, all adjusted premiums and present values referred to in this Article shall for all policies of ordinary insurance be calculated on the basis of the Commissioners 1941 Standard Ordinary Mortality Table, provided that for any category of ordinary insurance issued on female risks, adjusted premiums and present values may be calculated according to an age not more than three years younger than the

actual age of the insured and such calculations for all policies of industrial insurance shall be made on the basis of the 1941 Standard Industrial Mortality Table. All calculations shall be made on the basis of the rate of interest, not exceeding three and one-half per cent (3-1/2%) per annum, specified in the policy for calculating cash surrender values and paid-up nonforfeiture ~~[non-forfeiture]~~ benefits. Provided, however, that in calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture ~~[non-forfeiture]~~ benefit, the rates of mortality assumed may be not more than one hundred and thirty per cent (130%) of the rates of mortality according to such applicable table. Provided, further, that for insurance issued on a substandard basis, the calculation of any such adjusted premiums and present values may be based on such other table of mortality as may be specified by the company and approved by the State Board of Insurance.

"Calculation of Adjusted Premiums — Ordinary Policies

~~"[Calculation of Adjusted Premiums and Present Values of Ordinary Policies Issued on or After Operative Date of This Section]~~

"Section 6. This Section 6 shall not apply to ordinary policies issued on or after the operative date of Section 8 as defined therein. In the case of ordinary policies issued on or after the operative date of this Section 6 as defined herein, all adjusted premiums and present values referred to in this Article shall be calculated on the basis of the Commissioners 1958 Standard Ordinary Mortality Table and the rate of interest specified in the policy for calculating cash surrender values and paid-up ~~nonforfeiture~~ ~~[non-forfeiture]~~ benefits provided that such rate of interest shall not exceed three and one-half per cent (3-1/2%) per annum except that a rate of interest not exceeding four per cent (4%) per annum may be used for policies issued on or after June 14, 1973, and prior to August 29, 1977, and ~~[the effective date of this amendatory Act of 1977. For policies issued on and after the effective date of this amendatory Act of 1977,]~~ a rate of interest not exceeding five and one-half per cent (5-1/2%) per annum may be used for policies issued on or after August 29, 1977, except that for any single premium whole life or endowment insurance policy a rate of interest not exceeding six and one-half per cent (6-1/2%) per annum may be used provided that for ~~For~~ any category of ordinary insurance issued on female risks, adjusted premiums and present values may be calculated according to an age not more than three years younger than the actual age of the insured for policies issued prior to August 29, 1977, ~~[the effective date of this amendatory Act of 1977]~~ and for policies issued on and after August 29, 1977, ~~[such effective date]~~ adjusted premiums and present values may be calculated according to an age not more than six ~~(6)~~ years younger than the actual age of the insured. Provided, however, that in calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture ~~[non-forfeiture]~~ benefit, the rates of mortality assumed may be not more than those shown in the Commissioners 1958 Extended Term Insurance Table. Provided, further, that for insurance issued on a substandard ~~[sub-standard]~~ basis, the calculation of any such adjusted premiums and present values may be based on such other table of mortality as may be specified by the company and approved by the State Board of Insurance.

"After ~~[On or after]~~ the effective ~~[operative]~~ date of this Article, any company may file with the State Board of Insurance a written notice of its election to comply with the provisions of this Section after a specified date before January 1, 1974. After the filing of such notice, then upon such specified date (which shall be the operative date of this Section for such company), this

Section shall become operative with respect to the ordinary policies thereafter issued by such company prior to the operative date of Section 8 as defined therein. If a company makes no such election, the operative date of this Section for such company shall be January 1, 1974.

"Calculation of Adjusted Premiums — Industrial Policies

~~"[Industrial Policies, Adjusted Premiums and Present Values]~~

"Section 7. This Section 7 shall not apply to industrial policies issued on or after the operative date of Section 8 as defined therein. In the case of industrial policies issued on or after the operative date of this Section 7 as defined herein, all adjusted premiums and present values referred to in this Article shall be calculated on the basis of the Commissioners 1961 Standard Industrial Mortality Table and the rate of interest specified in the policy for calculating cash surrender values and paid-up nonforfeiture [non-forfeiture] benefits provided that such rate of interest shall not exceed three and one-half per cent (3-1/2%) per annum, except that a rate of interest not exceeding four per cent (4%) per annum may be used for policies issued on or after June 14, 1973, and prior to August 29, 1977, and [the effective date of this amendatory Act of 1977. For policies issued on and after the effective date of this amendatory Act of 1977] a rate of interest not exceeding five and one-half per cent (5-1/2%) per annum may be used for policies issued on or after August 29, 1977, except that for any single premium whole life or endowment insurance policy a rate of interest not exceeding six and one-half per cent (6-1/2%) per annum may be used. Provided, however, that in calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture [non-forfeiture] benefit, the rates of mortality assumed may be not more than those shown in the Commissioners 1961 Industrial Extended Term Insurance Table. Provided further, that for insurance issued on a substandard [sub-standard] basis, the calculations of any such adjusted premiums and present values may be based on such other table of mortality as may be specified by the company and approved by the State Board of Insurance.

"After [On or after] the effective [operative] date of this Article, any company may file with the State Board of Insurance a written notice of its election to comply with the provisions of this Section after a specified date before January 1, 1974. After the filing of such notice, then upon such specified date (which shall be the operative date of this Section for such company), this Section shall become operative with respect to the industrial policies thereafter issued by such company prior to the operative date of Section 8 as defined therein. If a company makes no such election, the operative date of this Section for such company shall be January 1, 1974.

"Calculation of Adjusted Premiums by the Nonforfeiture
Net Level Premium Method

"Section 8. (a) This Section shall apply to all policies issued on or after the operative date of this Section 8 as defined herein. Except as provided in Section 8(d), the adjusted premiums for any policy shall be calculated on an annual basis and shall be such uniform percentage of the respective premiums specified in the policy for each policy year, excluding amounts payable as extra premiums to cover impairments or special hazards and also excluding any uniform annual contract charge or policy fee specified in the policy in a statement of the method to be used in calculating the cash surrender values and paid-up nonforfeiture benefits, that the present value, at the date of issue of the policy, of all adjusted premiums shall be equal to the sum of:

"(1) the then present value of the future guaranteed benefits provided for by the policy;

“(2) one per cent (1%) of either the amount of insurance, if the insurance be uniform in amount, or the average amount of insurance at the beginning of each of the first ten (10) policy years; and

“(3) one hundred twenty-five per cent (125%) of the nonforfeiture net level premium as hereinafter defined.

“Provided, however, that in applying the percentage specified in (3) above no nonforfeiture net level premium shall be deemed to exceed four per cent (4%) of either the amount of insurance, if the insurance be uniform in amount, or the average amount of insurance at the beginning of each of the first ten (10) policy years. The date of issue of a policy for the purpose of this section shall be the date as of which the rated age of the insured is determined.

“(b) The nonforfeiture net level premium shall be equal to the present value, at the date of issue of the policy, of the guaranteed benefits provided for by the policy divided by the present value, at the date of issue of the policy, of an annuity of one per annum payable on the date of issue of the policy and on each anniversary of such policy on which a premium falls due.

“(c) In the case of policies which cause on a basis guaranteed in the policy unscheduled changes in benefits or premiums, or which provide an option for changes in benefits or premiums other than a change to a new policy, the adjusted premiums and present values shall initially be calculated on the assumption that future benefits and premiums do not change from those stipulated at the date of issue of the policy. At the time of any such change in the benefits or premiums the future adjusted premiums, nonforfeiture net level premiums and present values shall be recalculated on the assumption that future benefits and premiums do not change from those stipulated by the policy immediately after the change.

“Except as otherwise provided in Section 8(d), the recalculated future adjusted premiums for any such policy shall be such uniform percentage of the respective future premiums specified in the policy for each policy year, excluding amounts payable as extra premiums to cover impairments and special hazards, and also excluding any uniform annual contract charge or policy fee specified in the policy in a statement of the method to be used in calculating the cash surrender values and paid-up nonforfeiture benefits, that the present value, at the time of change to the newly defined benefits or premiums, of all such future adjusted premiums shall be equal to the excess of (A) the sum of (i) the then present value of the then future guaranteed benefits provided for by the policy and (ii) the additional expense allowance, if any, over (B) the then cash surrender value, if any, or present value of any paid-up nonforfeiture benefit under the policy.

“The additional expense allowance, at the time of the change to the newly defined benefits or premiums, shall be the sum of (i) one per cent (1%) of the excess, if positive, of the average amount of insurance at the beginning of each of the first ten (10) policy years subsequent to the change over the average amount of insurance prior to the change at the beginning of each of the first ten (10) policy years subsequent to the time of the most recent previous change, or, if there has been no previous change, the date of issue of the policy; and (ii) one hundred twenty-five per cent (125%) of the increase, if positive, in the nonforfeiture net level premium.

“The recalculated nonforfeiture net level premium shall be equal to the result obtained by dividing (A) by (B) where (A) equals the sum of (i) the nonforfeiture net level premium applicable prior to the change times the present value of an annuity of one per annum payable on each anniversary of the policy on or subsequent to the date of the change on which a premium would have fallen due had the change not occurred, and (ii) the present value of the

increase in future guaranteed benefits provided for by the policy, and (B) equals the present value of an annuity of one per annum payable on each anniversary of the policy on or subsequent to the date of change on which a premium falls due.

“(d) Notwithstanding any other provisions of this Section to the contrary, in the case of a policy issued on a substandard basis which provides reduced graded amounts of insurance so that, in each policy year, such policy has the same tabular mortality cost as an otherwise similar policy issued on the standard basis which provides higher uniform amounts of insurance, adjusted premiums and present values for such substandard policy may be calculated as if it were issued to provide such higher uniform amounts of insurance on the standard basis.

“(e) All adjusted premiums and present values referred to in this Section shall for all policies of ordinary insurance be calculated on the basis of (i) the Commissioners 1980 Standard Ordinary Mortality Table or (ii) at the election of the company for any one or more specified plans of life insurance, the Commissioners 1980 Standard Ordinary Mortality Table with Ten-Year Select Mortality Factors; shall for all policies of industrial insurance be calculated on the basis of the Commissioners 1961 Standard Industrial Mortality Table; and shall for all policies issued in a particular calendar year be calculated on the basis of a rate of interest not exceeding the nonforfeiture interest rate as defined in this Section for policies issued in that calendar year. Provided, however, that:

“(1) At the option of the company, calculations for all policies issued in a particular calendar year may be made on the basis of a rate of interest not exceeding the nonforfeiture interest rate, as defined in this Section, for policies issued in the immediately preceding calendar year.

“(2) Under any paid-up nonforfeiture benefit, including any paid-up dividend additions, any cash surrender value available, whether or not required by Section 2, shall be calculated on the basis of the mortality table and rate of interest used in determining the amount of such paid-up nonforfeiture benefit and paid-up dividend additions, if any.

“(3) A company may calculate the amount of any guaranteed paid-up nonforfeiture benefit including any paid-up additions under the policy on the basis of an interest rate no lower than that specified in the policy for calculating cash surrender values.

“(4) In calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than those shown in the Commissioners 1980 Extended Term Insurance Table for policies of ordinary insurance and not more than the Commissioners 1961 Industrial Extended Term Insurance Table for policies of industrial insurance.

“(5) For insurance issued on a substandard basis, the calculation of any such adjusted premiums and present values may be based on appropriate modifications of the aforementioned tables.

“(6) Any ordinary mortality tables, adopted after 1980 by the National Association of Insurance Commissioners, that are approved by regulation promulgated by the State Board of Insurance for use in determining the minimum nonforfeiture standard may be substituted for the Commissioners 1980 Standard Ordinary Mortality Table with or without Ten-Year Select Mortality Factors or for the Commissioners 1980 Extended Term Insurance Table.

“(7) Any industrial mortality tables, adopted after 1980 by the National Association of Insurance Commissioners, that are approved by regulation promulgated by the State Board of Insurance for use in determining the

minimum nonforfeiture standard may be substituted for the Commissioners 1961 Standard Industrial Mortality Table or the Commissioners 1961 Industrial Extended Term Insurance Table.

"(f) The nonforfeiture interest rate per annum for any policy issued in a particular calendar year shall be equal to one hundred and twenty-five per cent (125%) of the calendar year statutory valuation interest rate for such policy as defined in the Standard Valuation Law, rounded to the nearer one-fourth of one per cent (1/4 of 1%).

"(g) Notwithstanding any other provision in this Code to the contrary, any refiling of nonforfeiture values or their methods of computation for any previously approved policy form which involves only a change in the interest rate or mortality table used to compute nonforfeiture values shall not require refiling of any provisions of that policy form.

"(h) After the effective date of this Section 8, any company may file with the State Board of Insurance a written notice of its election to comply with the provisions of this Section after a specified date before January 1, 1989, which shall be the operative date of this Section for such company. If a company makes no such election, the operative date of this Section for such company shall be January 1, 1989.

"Nonforfeiture Benefits for Indeterminate Premium Plans and
Certain Other Plans

"Section 9. In the case of any plan of life insurance which provides for future premium determination, the amounts of which are to be determined by the insurance company based on then estimates of future experience, or in the case of any plan of life insurance which is of such a nature that minimum values cannot be determined by the methods described in Section 2, 3, 4, 5, 6, 7, or 8 herein, then:

"(a) The State Board of Insurance must be satisfied that the benefits provided under the plan are substantially as favorable to policyholders and insureds as the minimum benefits otherwise required by Section 2, 3, 4, 5, 6, 7, or 8 herein.

"(b) The State Board of Insurance must be satisfied that the benefits and the pattern of premiums of that plan are not such as to mislead prospective policyholders or insureds.

"(c) The cash surrender values and paid-up nonforfeiture benefits provided by such plan must not be less than the minimum values and benefits required for the plan computed by a method consistent with the principles of this Standard Nonforfeiture Law for Life Insurance, as determined by regulations promulgated by the State Board of Insurance.

"(d) Notwithstanding any other provision in the laws of this state, any policy, contract, or certificate providing life insurance under any such plan must be affirmatively approved by the State Board of Insurance before it can be marketed, issued, delivered, or used in this state.

"Proration of Values; Net Value of Paid-Up Additions

~~"[Cash surrender values and paid-up non-forfeiture
benefits on default in premium payment due at
time other than on policy anniversary]~~

"Section 10 [8]. Any cash surrender value and any paid-up nonforfeiture ~~[non-forfeiture]~~ benefit, available under the policy in the event of default in a premium payment due at any time other than on the policy anniversary, shall be calculated with allowance for the lapse of time and the payment of fractional premiums beyond the last preceding policy anniversary; provided, however, such cash surrender value or nonforfeiture ~~[non-forfeiture]~~ benefit shall not be required unless such cash surrender value or nonforfeiture ~~[non-forfeiture]~~

benefit was required on the preceding policy anniversary. All values referred to in Sections 3, 4, 5, 6, ~~and~~ 7, and 8 may be calculated upon the assumption that any death benefit is payable at the end of the policy year of death. The net value of any paid-up additions, other than paid-up term additions, shall not be less than the amounts ~~[dividends]~~ used to provide such additions. Notwithstanding the provisions of Section 3, additional benefits payable

"(a) in the event of death or dismemberment by accident or accidental means,

"(b) in the event of total and permanent disability,

"(c) as reversionary annuity or deferred reversionary annuity benefits,

"(d) as term insurance benefits provided by a rider or supplemental policy provision to which, if issued as a separate policy, this Article would not apply,

"(e) as term insurance on the life of a child or on the lives of children provided in a policy on the life of a parent of the child if such term insurance expires before the child's age is twenty-six, is uniform in amount after the child's age is one, and has not become paid-up by reason of the death of a parent of the child, and

"(f) as other policy benefits additional to life insurance and endowment benefits, and premiums for all such additional benefits, shall be disregarded in ascertaining cash surrender values and nonforfeiture ~~[non-forfeiture]~~ benefits required by this Article, and no such additional benefits shall be required to be included in any paid-up nonforfeiture ~~[non-forfeiture]~~ benefits.

"Consistency of Progression of Cash Surrender Values
With Increasing Policy Duration

"Section 11. This Section, in addition to all other applicable sections of this law, shall apply to all policies issued on or after January 1, 1985. Any cash surrender value available under the policy in the event of default in a premium payment due on any policy anniversary shall be in an amount which does not differ by more than two-tenths of one per cent ($2/10$ of 1%) of either the amount of insurance, if the insurance be uniform in amount, or the average amount of insurance at the beginning of each of the first ten (10) policy years, from the sum of (a) the greater of zero and the basic cash value hereinafter specified and (b) the present value of any existing paid-up additions less the amount of any indebtedness to the company under the policy.

"The basic cash value shall be equal to the present value, on such anniversary, of the future guaranteed benefits which would have been provided for by the policy, excluding any existing paid-up additions and before deduction of any indebtedness to the company, if there had been no default, less the then present value of the nonforfeiture factors, as hereinafter defined, corresponding to premiums which would have fallen due on and after such anniversary. Provided, however, that the effects on the basic cash value of supplemental life insurance or annuity benefits or of family coverage, as described in Section 3 or 5, whichever is applicable, shall be the same as are the effects specified in Section 3 or 5, whichever is applicable, on the cash surrender values defined in such applicable Section.

"The nonforfeiture factor for each policy year shall be an amount equal to a percentage of the adjusted premium for the policy year, as defined in Section 5 or 8, whichever is applicable. Such percentage (a) must be the same percentage for each policy year between the second policy anniversary and the later of (1) the fifth policy anniversary and (2) the first policy anniversary at which there is available under the policy a cash surrender value in an amount, before including any paid-up additions and before deducting any indebtedness, of at least two-tenths of one per cent ($2/10$ of 1%) of either the amount of insurance, if the insurance be uniform in amount, or the average amount of insurance at the

beginning of each of the first ten (10) policy years; and (b) must be such that no percentage after the later of the two (2) policy anniversaries specified in the preceding item (a) may apply to fewer than five (5) consecutive policy years. Notwithstanding the provisions contained in (a) and (b) of this paragraph, no basic cash value may be less than the value which would be obtained if the adjusted premiums for the policy, as defined in Section 5 or 8, whichever is applicable, were substituted for the nonforfeiture factors in the calculation of the basic cash value.

"All adjusted premiums and present values referred to in this Section shall for a particular policy be calculated on the same mortality and interest bases as are used in demonstrating the policy's compliance with the other sections of this Article. The cash surrender values referred to in this Section shall include any endowment benefits provided for in the policy.

"Any cash surrender value available other than in the event of default in a premium payment due on a policy anniversary, and the amount of any paid-up nonforfeiture benefit available under the policy in the event of default in a premium payment shall be determined in manners consistent with the manners specified for determining the analogous minimum amounts in Sections 2, 3, 4, 8, and 10. The amounts of any cash surrender values and of any paid-up nonforfeiture benefits granted in connection with additional benefits such as those listed in items (a) through (f) in Section 10 shall conform with the principles of this Section 11.

"Exceptions

"[Application of article]

"Section 12 [9]. This Article shall not apply to any of the following:

"(a) reinsurance,

"(b) group insurance,

"(c) pure endowment,

"(d) annuity or reversionary annuity contract, ~~[not to any]~~

"(e) term policy of uniform amount, which provides no guaranteed nonforfeiture or endowment benefits, or renewal thereof, of twenty years or less expiring before age seventy-one, for which uniform premiums are payable during the entire term of the policy, ~~[not to any]~~

"(f) term policy of decreasing amount, which provides no guaranteed nonforfeiture or endowment benefits, on which each adjusted premium, calculated as specified in Sections 5, 6, ~~[and]~~ 7, and 8, is less than the adjusted premium so calculated, on a ~~[such twenty year]~~ term policy of uniform amount, or renewal thereof, which provides no guaranteed nonforfeiture or endowment benefits, issued at the same age and for the same initial amount of insurance and for a term of twenty years or less expiring before age seventy-one, for which uniform premiums are payable during the entire term of the policy,

"(g) policy, which provides no guaranteed nonforfeiture or endowment benefits, for which no cash surrender value, if any, or present value of any paid-up nonforfeiture benefit, at the beginning of any policy year, calculated as specified in Sections 3, 4, 5, 6, 7, and 8 exceeds two and one-half per cent (2 1/2%) of the amount of insurance at the beginning of the same policy year, nor to any

"(h) policy which shall be delivered outside this state through an agent or other representative of the company issuing the policy.

"For purposes of determining the applicability of this Article, the age at expiry for a joint term life insurance policy shall be the age at expiry of the oldest life.

“Effective Date

~~“[Notice of election to comply with provisions
of Standard Non forfeiture Law]~~

“Section 13 [10]. After the effective date of this Article [Act], any company may file with the State Board of Insurance a written notice of its election to comply with the provisions of this Article after a specified date before January 1, 1974. After the filing of such notice, then upon such specified date (which shall be the operative date ~~[of Article 3.44a]~~ for such company), this Article shall become operative with respect to the policies thereafter issued by such company. If a company makes no such election, the operative date of this Article for such company shall be January 1, 1974.”

SECTION 3. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

The amendment was read.

Senator Harris moved to concur in the House amendment.

The motion prevailed.

GUESTS PRESENTED

The President presented his guests Mr. and Mrs. Hammond Norton of Marlin.

The Senate welcomed them as guests for today.

SENATE BILL 648 WITH HOUSE AMENDMENT

Senator Ogg called S.B. 648 from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

Committee Amendment No. 1 - Horn

Amend S.B. 648 on page 2, line 7, by inserting between “delivery” and the period, the following:

“, and at least 24 hours before the first such delivery in any particular election, the clerk shall notify the County Chairman of each political party having a nominee on the ballot of the time that the first delivery is to be made. Watchers appointed for the election are entitled to accompany the election officer making any delivery”.

The amendment was read.

Senator Ogg moved to concur in the House amendment.

The motion prevailed.

SENATE BILL 863 WITH HOUSE AMENDMENT

Senator Richards called **S.B. 863** from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

Committee Amendment No. 1 - Simpson

Amend **S.B. 863** on page 1, line 14 by inserting the following between the period and the word "A":

"An accounting of all grants shall be made to the governing board of the institution by the faculty member."

The amendment was read.

Senator Richards moved to concur in the House amendment.

The motion prevailed.

SENATE BILL 619 WITH HOUSE AMENDMENT

Senator Parker called **S.B. 619** from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

Committee Amendment No. 1 - Watson

Amend page 1, **S.B. 619** by striking the words "a governmental entity," on lines 15 and 6, and substituting the words "the state of Texas or any political subdivision thereof,".

The amendment was read.

Senator Parker moved to concur in the House amendment.

The motion prevailed.

SENATE BILL 730 WITH HOUSE AMENDMENTS

Senator Wilson called **S.B. 730** from the President's table for consideration of the House amendments to the bill.

The President laid the bill and the House amendments before the Senate.

Committee Amendment No. 1 - Keller

Substitute the following for **S.B. 730**:

**A BILL TO BE ENTITLED
AN ACT**

relating to funding for the Texas Commission on Alcoholism; amending Section 18 of Chapter 411, Acts of the 53rd Legislature, Regular Session, 1953, as amended.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

Section 1. Section 18 of Chapter 411, Acts of the 53rd Legislature, Regular Session, 1953, as last amended by Chapter 204, Acts of the 56th Legislature, Regular Session, 1959, codified as Section 18 of Article 5561c of the Revised Civil Statutes of the State of Texas, is hereby amended to read as follows:

"Section 18. (a) In order to provide adequate financing for community-based programs, the State Treasurer is hereby required to transfer from the General Revenue Fund to the Texas Commission on Alcoholism a total of \$4,000,000.00 per fiscal year out of the revenues received from those taxes allocated in their entirety to the General Revenue Fund under the terms of Article 24.01, Title 122A, Taxation-General, Revised Civil Statutes of the State of Texas as amended. The cost of financing the operations of the Texas Commission on Alcoholism shall be borne with funds as provided by Section 7 of this Act and such other funds as the Legislature may from time to time appropriate for this purpose. Funds for the operation of local councils on alcoholism shall be expended only if matched locally.

"(b) The funds received by the Texas Commission on Alcoholism under Subsection (a) of this section shall be used to develop and maintain a coordinated system of community-based programs designed to prevent alcohol addiction or abuse and community-based programs designed to treat or rehabilitate the victims of alcohol addiction or abuse. These funds shall not be used to displace federal, state, local, and other funds that would otherwise be available for such purposes. None of the funds received by the Texas Commission on Alcoholism under Subsection (a) of this section shall be used for administrative expenses of the Texas Commission on Alcoholism or for any purpose other than community-based programs. Any unused balances shall be transferred biennially to the General Revenue Fund."

SECTION 2. This Act takes effect September 1, 1981.

SECTION 3. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Floor Amendment No. 1 - Kubiak

Amend House Committee Substitute S.B. 730 by adding on Page 1, Line 18 between the word "amended" and the period the following language:

"and the amount transferred is hereby appropriated to the Texas Commission on Alcoholism for the purposes of this section"

The amendments were read.

Senator Wilson moved to concur in the House amendments.

The motion prevailed.

SENATE BILL 763 WITH HOUSE AMENDMENT

Senator Brooks called S.B. 763 from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

Committee Amendment No. 1 - Benedict

Amends S.B. 763 by removing the quotation marks on line 8 and line 12.

The amendment was read.

Senator Brooks moved to concur in the House amendment.

The motion prevailed.

SENATE BILL 604 WITH HOUSE AMENDMENTS

Senator Doggett called S.B. 604 from the President's table for consideration of the House amendments to the bill.

The President laid the bill and the House amendments before the Senate.

Committee Amendment No. 1 - Evans

Substitute the following for S.B. 604:

A BILL TO BE ENTITLED AN ACT

relating to continuation of the Texas Board of Examiners in the Fitting and Dispensing of Hearing Aids and regulation of the fitters and dispensers of hearing aid devices.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Sections 1, 2, 3, 6, 9, 10, 11, 12, 13, and 19, Chapter 366, Acts of the 61st Legislature, Regular Session, 1969, as amended (Article 4566-1.01 et seq., Vernon's Texas Civil Statutes), are amended to read as follows:

Sec. 1. DEFINITIONS. In this Act, unless the context requires a different definition:

(a) "Board" means the Texas Board of Examiners in the Fitting and Dispensing of Hearing Aids.

(b) "License" means license issued by the Board under this Act to a person authorized to fit and dispense hearing aids.

(c) "Temporary Training Permit" means a permit issued by the Board to persons authorized to fit and dispense hearing aids only under the supervision of a person who holds a license under this Act.

(d) "Hearing aid" means any instrument or device designed for, or represented as, aiding, improving or correcting defective human hearing, but as used herein shall not mean repair services, replacements for defective parts and shall not include batteries, cords and accessories.

(e) "Sell" or "sale" includes a transfer of title or of the right to use by lease, bailment, or any other contract. Provided, for the purpose of this Act, the term "sell" or "sale" shall not include sales at wholesale by manufacturers to persons licensed under this Act, or to distributors for distribution and sale to persons licensed under this Act.

(f) "Fitting and Dispensing hearing aids" means the measurement of human hearing by the use of an audiometer or by any means for the purpose of making selections, adaptations and/or sales of hearing aids. The term also includes the sale of hearing aids, and the making of impressions for earmolds to be used as a part of the hearing aid.

(g) "30-day trial period" means the period in which a person may cancel the purchase of a hearing aid.

Sec. 2. BOARD OF EXAMINERS. (a) The Texas Board of Examiners in the Fitting and Dispensing of Hearing Aids is hereby created. The Board shall be composed of nine members appointed by the Governor with the advice and consent of the senate. Appointments shall be made without regard to the race, creed, sex, religion, or national origin of the appointees. The Board members must have [with] the following qualifications, to-wit:

(1) Five of such members shall possess the necessary qualifications to fit and dispense hearing aids in this state and have been residents of this state actually engaged in fitting and dispensing hearing aids for at least five years immediately preceding their appointment. No more than two of such five members shall be employed by, franchised by, or associated exclusively with the same hearing aid manufacturer;

(2) Two board members must be members of the general public. A person is eligible for appointment as a public member if the person and the person's spouse are not licensed by an occupational regulatory agency in the field of health care; are not employed by and do not participate in the management of a business entity or other organization that provides health-care services or that sells, manufactures, or distributes health-care supplies or equipment; and do not own, control, or have, directly or indirectly, an interest in a business entity or other organization that provides health-care services or that sells, manufactures, or distributes health-care supplies or equipment [One of such members shall be a citizen of the United States and a resident of this state for a period of at least two years immediately preceding his appointment and such member shall not have a financial interest in a hearing aid manufacturing company or a wholesale hearing aid company];

(3) One of such members shall be a citizen of the United States and a resident of this state for a period of at least two years immediately preceding his appointment, shall be an active practicing physician or surgeon duly licensed to practice in this state by the Texas State Board of Medical Examiners, and specialize in the practice of otolaryngology. Such member shall not have a financial interest in a hearing aid manufacturing company or a wholesale or retail hearing aid company; and

(4) One of such members shall be a citizen of the United States and a resident of this state for a period of at least two years immediately preceding his appointment and shall be an active practicing audiologist. Such member shall not have a financial interest in a hearing aid manufacturing company or a wholesale or retail hearing aid company.

(b) One who has served two full consecutive terms on the Board shall not be eligible for a reappointment to the Board for a period of 12 months immediately following the expiration of the second full term.

(c) In the event of death, resignation or removal of any members, the vacancy of the unexpired terms shall be filled by the Governor in the same manner as other appointments. Each appointee to the Board shall, within 15 days from the date of his appointment, qualify by taking the constitutional oath of office. Upon presentation of such oath, the Secretary of State shall issue commissions to appointees as evidence of their authority to act as members of the Board.

(d) Members hold office for staggered terms of six years, and each member shall continue until a successor is appointed and qualifies. [The members of the initial Board, to be appointed by the Governor to take office on the effective date of this Act, shall be divided into three classes, to-wit: Class One, Class Two, and Class Three, and their terms of office shall be determined

~~by lot at the first meeting of the Board. The three Class One members shall hold office for two years; and the three Class Two members shall hold office for four years; and the three Class Three members shall hold office for six years respectively, from the time of their appointment. Biennially thereafter, the Governor shall appoint three members of the Board to hold office for a term of six years.]~~

(e) The Board shall be represented by the Attorney General and the District and County Attorneys of the state.

(f) A person who is required to register as a lobbyist under Chapter 422, Acts of the 63rd Legislature, Regular Session, 1973, as amended (Article 6252-9c, Vernon's Texas Civil Statutes), may not serve as a member of the Board or act as the general counsel to the Board.

(g) A member or employee of the Board may not be an officer, employee, or paid consultant of a statewide or national trade association in the hearing aid industry. A member or employee of the Board may not be related within the second degree by affinity or consanguinity to a person who is an officer, employee, or paid consultant of a statewide or national trade association in the regulated industry.

(h) It is a ground for removal from the Board if a member:

(1) does not have at the time of appointment the qualifications required by Subsection (a) of this section for appointment to the Board;

(2) does not maintain during his service on the Board the qualifications required by Subsection (a) of this section for appointment to the Board;

(3) violates a prohibition established by Subsection (f) or (g) of this section; or

(4) fails to attend at least half of the regularly scheduled Board meetings held in a calendar year, excluding meetings held while the person was not a Board member.

(i) The validity of an action of the Board is not affected by the fact that it was taken when a ground for removal of a member of the Board existed.

(j) ~~[(f)]~~ The Texas Board of Examiners in the Fitting and Dispensing of Hearing Aids is subject to the Texas Sunset Act, as amended (Article 5429k, Vernon's Texas Civil Statutes); and unless continued in existence as provided by that Act the board is abolished, and this Act expires effective September 1, 1993 [1984].

(k) The Board is subject to the open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967, as amended (Article 6252-17, Vernon's Texas Civil Statutes), and the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes).

Sec. 3. BOARD ORGANIZATION AND MEETINGS. Within 60 days after their appointment and qualification the initial Board shall hold its first meeting and elect a President, Vice-President, and Secretary-Treasurer. The term of office for all officers of the Board shall be for a period of one year.

The Board shall hold regular meetings at least twice a year at which an examination of applicants for license shall be given. ~~[Not less than 30 days notice of such meeting shall be given by publication in at least three daily newspapers of general circulation to be selected by the Board. Written notice of such regular meetings of the Board shall be given to the members by the Secretary-Treasurer of the Board by certified mail not less than 30 days prior to the date of such regular meeting.]~~ Special meetings of the Board shall be held upon ~~[the written]~~ request of a majority of the members or upon the call of the President. ~~[Written notice of such special meetings of the Board shall be given to members by the Secretary-Treasurer of the Board by certified mail not less than 30 days prior to the date of the special meetings.]~~ A majority of the Board

shall constitute a quorum for the transaction of business and should a quorum not be present on the day appointed for any meeting, those present may adjourn from day to day until a quorum be present provided such period shall not be longer than three successive days.

Sec. 6. EXAMINATION: APPLICATION. (a) Every person desiring to engage in fitting and dispensing hearing aids in the State of Texas shall be required to pass an examination given by the Texas Board of Examiners in the Fitting and Dispensing of Hearing Aids.

(b) The applicant shall make application, furnishing to the Secretary-Treasurer of the Board on forms to be furnished by the Board, sworn evidence that he has attained the age of majority ~~[18 years, is of good moral character, is free of contagious or infectious disease,]~~ and has graduated from an accredited high school or equivalent, and such other information as the Board may deem necessary for the enforcement of this Act.

(c) The examination shall consist of written, oral or practical tests that shall be objective in method and applied in a consistent manner. The examination shall cover the following areas as they relate to the fitting and dispensing of hearing aids [in the following areas as they pertain to the fitting and dispensing of hearing aids, to wit]:

- (1) Basic physics of sound;
- (2) The structure and function of hearing aids;
- (3) Fitting of hearing aids;
- (4) Pure tone audiometry, including air conduction testing and bone conduction testing;
- (5) Live voice and/or record voice speech audiometry;
- (6) Masking when indicated;
- (7) Recording and evaluation of audiograms and speech audiometry to determine the hearing aid candidacy;
- (8) Selection and adaption of hearing aids and testing of hearing aids; and
- (9) Taking of earmold impressions.

(d) No part of the examination shall consist of tests requiring knowledge of the diagnosis and/or treatment of any disease or injury to the human body.

(e) Each applicant shall be given due notice of the date and place of the examination and the subjects, areas, and/or skills that will be included within such examination, and there shall be no changes in said subjects, areas, and/or skills after the date of the examination has been announced and publicized ~~[nor shall there be more than one change or group of changes in any one calendar year]~~. All examinations shall be conducted in writing and by such other means as the Board shall determine adequate to ascertain the qualifications of applicants. Upon reexamination, a person who has previously failed shall be examined only on those portions of the examination which he failed. ~~[All applicants examined during a given calendar year shall be given the same examination.]~~ Every applicant successfully passing the examination and meeting all the requirements of this Act shall be registered by the Board as possessing the qualifications required by this Act and shall receive from the Board a license to fit and dispense hearing aids in this state.

(f) The Board, in its discretion, may refuse to examine an applicant if he has been convicted of a felony or a misdemeanor that involved moral turpitude.

(g) Within 30 days after the date a licensing examination is administered under this Act, the Board shall notify each examinee of the results of the examination. However, if an examination is graded or reviewed by a national testing service, the Board shall notify each examinee of the results of the examination within two weeks after the date the Board receives the results from the testing service. If the notice of the examination results will be delayed for

more than 90 days after the examination date, the Board shall notify each examinee of the reason for the delay before the 90th day. If requested in writing by a person who fails the licensing examination administered under this Act, the Board shall furnish the person with an analysis of the person's performance on the examination.

Sec. 9. TEMPORARY TRAINING PERMIT. (a) The Board shall grant a temporary training permit to fit and dispense hearing aids to any person applying to the Board who has never taken the examination provided in the Act and who possesses the qualifications in Subsection (b) of Section 6, of this Act, upon written application to the Secretary-Treasurer of the Board, the applicant shall make application on forms to be furnished by the Board furnishing sworn evidence that he possesses the qualifications contained in Subsection (b), Section 6, of this Act, that he has never taken the examination provided in this Act, and that he has never previously been issued a temporary training permit to fit and dispense hearing aids by the Board.

(b) The application for a temporary permit shall be accompanied by the affidavit of a person duly licensed and qualified to fit and dispense hearing aids in this state. The accompanying affidavit shall state that the applicant, if granted a temporary training permit, will be supervised by the affiant in all work done by applicant under such temporary training permit, that affiant will notify the Board within 10 days following applicant's terminating of supervision by affiant.

(c) A temporary training permit shall authorize the holder thereof, to fit and dispense hearing aids for a period of one year or until the holder thereof shall have successfully passed the examination required for a license under this Act, whichever occurs first.

(d) A temporary training permit shall automatically become void at the end of the period of 6 months from the date of its issuance unless extended for an additional period not to exceed 6 months by the Board. The Board shall never extend a temporary training permit more than one time.

(e) The Board shall establish educational guidelines, both formal and practical, for the training of temporary permit holders. The training guidelines shall include directions to the training supervisor about subject matter to be taught, length of the training period, extent of trainee contact with the public, and responsibility of the training supervisor for direct supervision of all aspects of the training period.

Sec. 10. ~~Grounds for Disciplinary Actions [Refusal to License and Revocation or Suspension of License Grounds].~~ The Board shall revoke or suspend a permit or license, place on probation a person whose permit or license has been suspended, or reprimand a permittee or licensee for any of the following violations ~~[The Board may, in its discretion, refuse to issue a license to any applicant and may cancel, revoke or suspend the operation of any license by it granted, for any of the following reasons]:~~

~~[(1) The applicant or licensee is guilty of gross immorality.~~

~~[(2) The applicant or licensee is unfit or incompetent by reason of negligence.]~~

(1) ~~[(3)]~~ The temporary trainee [applicant] or licensee is guilty of any fraud, deceit or misrepresentation in the fitting and dispensing of hearing aids or in his seeking of a license under this Act.

(2) ~~[(4)]~~ The temporary trainee [applicant] or licensee is ~~[has been]~~ convicted of a felony or a misdemeanor which involves ~~[involved]~~ moral turpitude..

(3) The temporary trainee or licensee is unable to fit and dispense hearing aids with reasonable skill and safety to customers by reason of incompetence, age, illness, drunkenness, excessive use of drugs, narcotics, chemicals, or any other type of material or as a result of any condition causing the temporary trainee or licensee to become mentally or physically incapable as determined by a court of competent jurisdiction ~~[(5) The applicant or licensee is a habitual drunkard or is addicted to the use of morphine, cocaine, or other drugs having similar effects or has become insane or has been adjudged by a court of competent jurisdiction to be of unsound mind].~~

(4) ~~[(6)]~~ The temporary trainee ~~[applicant]~~ or licensee has violated any of the provisions of this Act or Board rules.

(5) ~~[(7)]~~ The licensee has knowingly, directly or indirectly employed, hired, procured, or induced a person not licensed to fit and dispense hearing aids in this state, to so fit and dispense hearing aids.

(6) ~~[(8)]~~ The licensee aids or abets any person not duly licensed under this Act in the fitting or dispensing of hearing aids.

(7) ~~[(9)]~~ The licensee lends, leases, rents, or in any other manner places his license at the disposal or in the service of any person not licensed to fit and dispense hearing aids in this state.

(8) ~~[(10)]~~ The licensee knowingly used or caused or promoted the use of any advertising matter, promotional literature, guarantees, warranty, disseminated or published with misleading, deceiving or false information. It is the intention of the Legislature that the provisions of this subdivision ~~[Subsection (10) and the following Subsection (11)]~~ be interpreted insofar as possible to coincide with the orders and rules of the Federal Trade Commission on such subjects.

~~[(11) The licensee advertised a particular model, type or kind of hearing aid for sale when purchasers or prospective purchasers responding to the advertisement cannot purchase or are dissuaded from purchasing the advertised model, type, or kind when it is established that the purpose of the advertisement is to obtain prospects for the sale of a different model, type or kind than was advertised.]~~

(9) ~~[(12)]~~ The licensee represented that the service or advice of a person licensed to practice medicine by the Texas State Board of Medical Examiners is used or made available in the selection, fitting, adjustment, maintenance, or repair of a hearing aid when such representation was not true.

(10) ~~[(13)]~~ The licensee used the term "doctor," "clinic" or any like words, abbreviations or symbols in the conduct of his business which would tend to connote that the licensee was a physician or surgeon.

~~[(14) The licensee defamed another licensee under this Act by falsely imputing to him dishonorable conduct, inability to perform contracts, questionable credit standing, or any other false representation or falsely disparaging the products of such other licensee in any respect, or the business methods, selling prices, values, credit terms, policies, or services of such other licensee.]~~

~~[(15) The licensee displayed competitive products in his place of business, or in the advertising in such manner as to falsely disparage them.]~~

~~[(16) The licensee quoted prices of competitive hearing aids or devices without disclosing that the prices were not the present, correct, current prices, or falsely showed, demonstrated or represented competitive hearing aids models as being the correct, current model of such hearing aids.]~~

~~[(17) The licensee imitated or simulated the trademark, tradename, brand, or label of another licensee under this Act with the intent to mislead or deceive purchasers or prospective purchasers.]~~

~~[(18) The licensee used in his advertising the name, model name or trademark of a particular manufacturer of hearing aids with the intent to falsely imply a relationship with such manufacturer that does not exist.]~~

(11) ~~[(49)]~~ The licensee obtained or attempted to obtain information concerning the business of another licensee under this Act by bribery, or attempting to bribe an employee or agent of such other licensee or by the impersonation of one in authority.

(12) ~~[(20)]~~ The licensee directly or indirectly gave, or offered to give or permitted or caused to be given money or anything of value to any person who advises others in a professional capacity as an inducement to influence such person to influence those persons such person advises in a professional capacity to purchase or contract to purchase products sold or offered for sale by licensee or to refrain from purchasing or contracting to purchase products sold or offered for sale by any other licensee under this Act.

(13) ~~[(24)]~~ The licensee falsely represented to a purchaser that a hearing aid was "custom-made," "made to order," "prescription-made" or any other representations that such hearing aid was specially fabricated for the purchaser.

(14) ~~[(22)]~~ The licensee refused to accept responsibility for the acts of a temporary training permittee in a licensee's employ and under licensee's supervision.

(15) ~~[(23)]~~ The licensee with fraudulent intent, engaged in the fitting and dispensing of hearing aids under a false name or alias.

~~[(24) The licensee had failed to actively engage in the fitting and dispensing of hearing aids for a period of three consecutive years.]~~

Sec. 11. DISCIPLINARY ACTIONS ~~[PROCEDURE]~~. (a) If the Board proposes to refuse a person's application for examination, to suspend or revoke a person's license, or to probate or reprimand a person, the person is entitled to a hearing before the Board.

(b) The proceedings are governed by the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes).

(c) ~~[(a)]~~ Proceedings ~~[for revocation or suspension of a license]~~ shall be commenced by filing charges with the Board in writing and under oath. The charges may be made by any person or persons.

(d) ~~[(b)]~~ The president of the Board shall fix a time and place for a hearing and shall cause a copy of the charges, together with a notice of the time and place fixed for the hearing to be served upon the applicant or licensee against whom charges have been filed at least 30 days prior thereto. Service of such charges and notice of hearing thereon may be given by certified mail to the last known address of such licensee or applicant.

(e) ~~[(c)]~~ At the hearing, such applicant or licensee shall have the right to appear either personally or by counsel or both to produce witnesses, and to have subpoenas issued by the Board and cross-examine opposing or adverse witnesses.

(f) ~~[(d)]~~ The Board shall not be bound by strict rules of procedure or by the laws of evidence in the conduct of its proceedings but the determination shall be founded upon sufficient legal evidence to sustain it.

(g) ~~[(e)]~~ The Board shall determine the charges upon their merits. The Board shall enter an order in the permanent records of the Board setting forth the findings of fact and law of the Board and its action thereon. A copy of such order of the Board shall be mailed to such applicant or licensee to his last known address by certified mail.

(h) ~~[(f)]~~ Any person whose license to fit and dispense hearing aids has been refused or has been cancelled, revoked or suspended by the Board, may,

within 20 days after making and entering of such order, take an appeal to any district court of Travis County or any district court of the county of his residence.

~~(i) [(g)] A case reviewed under the provisions of this section proceeds in such district court by trial de novo as that term is used and understood in appeals from justice of the peace courts to the county courts of this state.~~ Appeal from the judgment of such district court will lie as other civil cases.

~~(j) [(h)]~~ Upon application, the Board may reissue a license to fit and dispense hearing aids to a person whose license has been cancelled or revoked but such application shall not be made prior to the expiration of a period of six months after the order of cancellation or revocation has become final, and such application shall be made in such manner and form as the Board may require.

Sec. 12. FEES AND EXPENSES. (a) The Board shall establish reasonable and necessary fees for the administration of this Act, in amounts not to exceed:

1. Temporary Training Permit	\$ 40
2. Examination Fee	125
3. License Fee	75
4. License Renewal Fee	195
5. Duplicate Document Fee	10

~~[charge a fee of \$25.00 for issuing a temporary training permit, which fee must accompany the application for a temporary training permit].~~

~~(b) [The Board shall charge a fee of \$35.00 for examining an applicant for a license, which fee must accompany the application.]~~

~~[(c)] The Board shall charge a fee of \$50.00 for issuing a license.~~

~~[(f)] Any person making application for a license without an examination as provided in Sections 7 and 8 must submit such fee with such application.~~

Every person passing the examination and meeting the requirements of the Board shall be notified that he is eligible for such license upon payment of the fee herein provided. Such notice shall be by certified mail at the address given on his examination papers. The fee for issuance of such license must be paid by the applicant within 90 days after having been notified. Failure to pay such fee within such time shall constitute a waiver of the right to such person to obtain his license.

~~[(d)] The Board shall charge a fee of \$5.00 for each duplicate license or duplicate temporary training permit.]~~

~~(c) [(e)]~~ The Secretary-Treasurer of the Board shall, on or before the 10th day of each month, remit to the State Treasurer all of the fees collected by the Board during the preceding month for deposit in the General Revenue Fund.

(d) Each member of the board is entitled to a per diem as set by legislative appropriation for each day that the member engages in the business of the board. A member may not receive any compensation for travel expenses, including expenses for meals and lodging, other than transportation expenses. A member is entitled to compensation for transportation expenses as prescribed by the general appropriations act. [Each member of the Board is entitled to a per diem of \$30 for each day he is engaged in performance of the duties of his office.] The travel expenses allowance for members of the Board and its employees shall be provided in the General Appropriations Act. The executive director of the Board shall be allowed his actual expenses incurred while traveling on official business for the Board.

~~(e) [(g)]~~ The number of days for which compensation may be paid to members of the Board shall not exceed two days in any calendar month except

in those months in which examinations are held, but compensations may never be allowed to exceed six days in those months in which examinations are held.

~~(f) [(h)]~~ The Board may authorize all necessary disbursements to carry out the provisions of this Act, including payment of the premium on the bond of the Secretary-Treasurer, stationery expenses, purchase and maintain or rent equipment and facilities necessary to carry out the examinations of applications for license; pay for printing of all licenses; rent and furnish an office to maintain the permanent records of the Board.

~~(g) [(i)]~~ Funds for the administration of this Act shall be provided by the General Appropriations Act from the General Revenue Fund. The state auditor shall audit the financial transactions of the board each fiscal year.

~~[(j)] The balance of all money remaining in the "Fitting and Dispensing of Hearing Aids Fund" account on August 31, 1979, is transferred to the General Revenue Fund.~~

Sec. 13. RENEWAL OF LICENSE. (a) Each license to fit and dispense hearing aids shall be issued for the term of one year and shall, unless suspended or revoked, be renewed annually on September 1 on payment of the renewal fee.

(b) A person may renew his unexpired license by paying to the Board before the expiration date of the license the required renewal fee.

(c) If a person's license has been expired for not more than 90 days, the person may renew the license by paying to the Board the required renewal fee and a fee that is one-half of the examination fee for the license.

(d) If a person's license has been expired for more than 90 days but less than two years, the person may renew the license by paying to the Board all unpaid renewal fees and a fee that is equal to the examination fee for the license.

(e) If a person's license has been expired for two years or more, the person may not renew the license. The person may obtain a new license by submitting to reexamination and complying with the requirements and procedures for obtaining an original license.

(f) Before a license can be renewed, the Board shall require certification that all testing equipment, both portable and stationary, used by the licensee has been calibrated within one year prior to the renewal date. [On or before the first day of January, 1972, every licensee under this Act shall pay to the Secretary-Treasurer of the Board an annual renewal fee of \$67.50 for the renewal of his license to fit and dispense hearing aids for the year 1972. On or before the first day of January, 1973, and every year thereafter, every licensee under this Act shall pay to the Secretary-Treasurer of the Board an annual renewal fee of \$125.00 for renewal of his license to fit and dispense hearing aids for the current year. On receipt of said renewal fee, the Board shall issue an annual renewal certificate bearing the number of his license, the year for which it is renewed, and such other information from the records of the Board as the Board may deem necessary for the proper enforcement of this Act.]

[(b)] When a licensee shall fail to pay his annual renewal fee by February 1st of each year, it shall be the duty of the Board to notify such licensee by certified mail at his last known address that said annual renewal fee is due and unpaid; if the annual renewal fee is not paid within 60 days from the said date of mailing such notice, the Board shall then cancel said license.

(g) [(e)] Fitting and dispensing hearing aids without an annual renewal certificate for the current year as provided herein shall have the same force and effect and be subject to the same penalties as fitting and dispensing hearing aids without a license.

~~[(d) After the Board shall have cancelled a license for nonpayment of the annual renewal fee, the Board may refuse to issue a new license until such fitter and dispenser of hearing aids has paid all previous unpaid annual fees.]~~

~~(h) [(e)]~~ The Board shall issue a duplicate license to any licensee whose license has been lost or destroyed and the Board shall have the authority to prescribe the procedure and requirements for the issuance of the duplicate license.

Sec. 19. EXCEPTIONS. Nothing in this Act shall be construed to apply to the following:

(1) Persons engaged in the practice of measuring human hearing as a part of the academic curriculum of an accredited institution of higher learning, provided such persons or their employees do not sell hearing aids.

~~(2) [Persons engaged in the practice of measuring human hearing as a part of a program conducted by a nonprofit organization, provided such organization or its employees does not sell hearing aids.]~~

~~[(3)]~~ Physicians and surgeons duly licensed by the Texas State Board of Medical Examiners and qualified to practice in the State of Texas.

(3) An individual with a master's or doctorate degree in audiology from an accredited college or university may engage in the measurement of human hearing by the use of an audiometer or by any means for the purpose of making selections and adaptations of or recommendations for a hearing aid, provided such persons do not sell hearing aids.

~~[(4) Persons employed and directly supervised by a physician and surgeon to test or measure human hearing, provided such persons do not sell hearing aids.]~~

SECTION 2. Chapter 366, Acts of the 61st Legislature, Regular Session, 1969, as amended (Article 4566-1.01 et seq., Vernon's Texas Civil Statutes), is amended by adding Sections 4A, 12A, and 12B to read as follows:

Sec. 4A. PERSONNEL POLICIES. (a) The President of the Board or his designee shall develop an intra-agency career ladder program, one part of which shall be the intra-agency posting of all non-entry-level positions for at least 10 days before any public posting.

(b) The President of the Board or his designee shall develop a system of annual performance evaluations based on measurable job tasks. All merit pay for Board employees must be based on the system established under this subsection.

The board may recognize, prepare, or carry out continuing education programs for its licensees. Participation in the programs is voluntary.

Sec. 12A. ADVERTISEMENTS. The Board may not adopt rules restricting competitive bidding or advertising by a person regulated by the Board except to prohibit false, misleading, or deceptive practices by the person. The Board may not include in its rules to prohibit false, misleading, or deceptive practices by a person regulated by the Board a rule that:

(1) restricts the person's use of any medium for advertising;

(2) restricts the person's personal appearance or use of his voice in an advertisement;

(3) relates to the size or duration of an advertisement by the person; or

(4) restricts the person's advertisement under a trade name.

Sec. 12B. CONSUMER INFORMATION AND COMPLAINTS. (a) The Board shall prepare information of consumer interest describing the regulatory functions of the Board and the Board's procedures by which consumer complaints are filed with and resolved by the Board. The Board shall make the information available to the general public and appropriate state

(b) Each written contract for services in this state of a licensed hearing aid fitter and dispenser shall contain the name, mailing address, and telephone number of the Board. There shall at all times be prominently displayed in the place of business of each licensee regulated under this Act a sign containing the name, mailing address, and telephone number of the Board and a statement informing consumers that complaints against licensees can be directed to the Board.

(c) The Board shall establish guidelines for a 30-day trial period on every hearing aid purchased from a licensed hearing aid fitter and dispenser.

(d) The Board shall keep an information file about each complaint filed with the Board relating to a licensee. If a written complaint is filed with the Board relating to a licensee, the Board, at least as frequently as quarterly and until final disposition of the complaint, shall notify the parties to the complaint of the status of the complaint unless the notice would jeopardize an undercover investigation.

SECTION 3. A rule adopted by the Texas Board of Examiners in the Fitting and Dispensing of Hearing Aids before September 1, 1981, that conflicts with Chapter 366, Acts of the 61st Legislature, Regular Session, 1969 (Article 4566-1.01 et seq., Vernon's Texas Civil Statutes), as amended by this Act, is void. Within 90 days after September 1, 1981, the board shall repeal the rule.

SECTION 4. A person holding office as a member of the Texas Board of Examiners in the Fitting and Dispensing of Hearing Aids on the effective date of this Act continues to hold the office for the term for which the member was originally appointed.

SECTION 5. Sections 7 and 20, Chapter 366, Acts of the 61st Legislature, Regular Session, 1969 (Article 4566-1.01 et seq., Vernon's Texas Civil Statutes), are repealed.

SECTION 6. Subdivision 7, Subsection (a), Section 15, Chapter 366, Acts of the 61st Legislature, Regular Session, 1969, as amended by Section 3, Chapter 796, Acts of the 62nd Legislature, Regular Session, 1971 (Article 4566-1.15(a)(7), Vernon's Texas Civil Statutes), is repealed.

SECTION 7. Section 14, Chapter 366, Acts of the 61st Legislature, Regular Session, 1969, as amended (Article 4566-1.14, Vernon's Texas Civil Statutes), is amended by adding Subsection (e) to read as follows:

(e) Any individual licensed under this Act shall seek personally or through proper referral channels to obtain the following minimal information on each prospective candidate for amplification:

(1) pertinent case history;
(2) otoscopic inspection of the outer ear, including canal and drumhead;
(3) evaluation of hearing acuity utilizing puretone techniques via air and bone conduction pathways through a calibrated system; and

(4) an aided and unaided speech reception threshold and ability to differentiate between the phonemic elements of the language through speech audiometry, utilizing a calibrated system.

SECTION 8. (a) This Act takes effect September 1, 1981.

(b) The requirements under Section 4A, Chapter 366, Acts of the 61st Legislature, Regular Session, 1969, as added by this Act, that the president of the board develop an intra-agency career ladder program and a system of annual performance evaluations, shall be implemented before September 1, 1982. The requirement of Section 4A that merit pay is to be based on the performance evaluation system shall be implemented before September 1, 1983.

SECTION 9. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Floor Amendment No. 1 - Evans

Amend C.S.S.B. 604 by adding the following language on p. 24 line 11 after "rule.":

If the appropriate standing committees of both houses of the legislature acting under Subsection (g), Section 5, Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes), transmit to the board/commission statements opposing adoption of a rule under that section, the rule may not take effect, or if the rule has already taken effect, the rule is repealed effective on the date the board/commission receives the committee's statements.

Floor Amendment No. 2 - Evans

Amend Second Reading Amendment 1 to C.S.S.B. 604 to read as follows:

AMENDMENT NO. 1

Amend C.S.S.B. 604 as follows:

(1) On page 22, line 12, after "4A," insert "4B,".

(2) On page 22, after line 25, insert the following:

Sec. 4B. LEGISLATIVE REVIEW OF RULES. If the appropriate standing committees of both houses of the legislature acting under Subsection (g), Section 5, Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes), transmit to the Board statements opposing adoption of a rule under that section, the rule may not take effect, or if the rule has already taken effect, the rule is repealed effective on the date the Board receives the committees' statements.

The amendments were read.

Senator Doggett moved to concur in the House amendments.

The motion prevailed.

SENATE BILL 441 WITH HOUSE AMENDMENT

Senator Doggett called S.B. 441 from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

Committee Amendment No. 1 - Evans

Substitute the following for S.B. 441:

A BILL TO BE ENTITLED
AN ACT

relating to continuation of the Polygraph Examiners Board and regulation of the operators of devices that are intended to determine if a person is telling the truth and to disclosure of the information acquired from the devices; providing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 5, Polygraph Examiners Act (Article 4413(29cc), Vernon's Texas Civil Statutes), is amended by amending Subsections (a), (b),

and (e) and by adding Subsections (f), (g), (h), (i), (j), and (k) to read as follows:

(a) There is hereby established ~~[in the Engineering Extension Service, Police Training Division, Texas A&M University System,]~~ a Polygraph Examiners Board consisting of six members who shall be citizens of the United States and residents of the state for at least two years prior to appointment. ~~Four members~~~~[, all of whom]~~ shall each have been engaged for a period of five consecutive years as a polygraph examiner prior to appointment to the board, and at the time of appointment as an active polygraph examiner. ~~Two members must be representatives of the general public. A person is eligible for appointment as a public member if the person and the person's spouse are not licensed by an occupational regulatory agency in the field of polygraph examining, are not employed by and do not participate in the management of an agency or business entity related to the field of polygraph examining, and do not have, other than as consumers, a financial interest in a business entity related to the field of polygraph examining. No two board members may be employed by the same person or agency. Two of the~~ ~~[At least two]~~ members who are polygraph examiners must be qualified examiners of a governmental law enforcement agency, one of which shall be the supervisor of the polygraph section of the Department of Public Safety, and ~~[at least]~~ two of the members who are polygraph examiners must be qualified polygraph examiners in the commercial field. The members shall be appointed by the Governor of the State of Texas with the advice and consent of the Senate for a term of six years. ~~[The terms of office of members appointed to the initial board are two for two years; two for four years; and two for six years.]~~ Any vacancy in an unexpired term shall be filled by appointment of the Governor with the advice and consent of the Senate for the unexpired term. Appointments shall be made without regard to the race, creed, sex, religion, or national origin of the appointees.

(b) The board shall contract with the Department of Public Safety for the administrative functions of the board including the collection of all fees and money due and the payment of all expenses, including travel expenses of board members.

Each member of the Board is entitled to a per diem as set by legislative appropriation for each day that the member engages in the business of the Board. A member may not receive any compensation for travel expenses, including expenses for meals and lodging other than transportation expenses. ~~[The number of employees and the salaries of each, including travel and expense allowance of]~~ A member is entitled to compensation for transportation expenses as prescribed by the general appropriations act. ~~[the members of the Board shall be as fixed in the General Appropriation Bill.]~~

(c) The Polygraph Examiners Board is subject to the Texas Sunset Act, as amended (Article 5429k, Vernon's Texas Civil Statutes); and unless continued in existence as provided by that Act the board is abolished, and this Act expires effective September 1, 1993 ~~[1981]~~.

(f) A member or employee of the board may not be an officer, employee, or paid consultant of a trade association in the polygraph examining field. A member or employee of the board may not be related within the second degree by affinity or consanguinity to a person who is an officer, employee, or paid consultant of a trade association in the regulated industry.

(g) A person who is required to register as a lobbyist under Chapter 422, Acts of the 63rd Legislature, Regular Session, 1973, as amended (Article 6252-9c, Vernon's Texas Civil Statutes), may not serve as a member of the board or act as the general counsel to the board.

(h) It is a ground for removal from the board if a member:

(1) does not have at the time of appointment the qualifications required by Subsection (a) of this section for appointment to the board;

(2) does not maintain during his service on the board the qualifications required by Subsection (a) of this section for appointment to the board;

(3) violates a prohibition prescribed by Subsection (f) or (g) of this section; or

(4) fails to attend at least half of the regularly scheduled board meetings held in a calendar year, excluding meetings held while the person was not a board member.

(i) If a ground for removal of a member from the board exists, the board's actions taken during the existence of the ground for removal are not invalid for that reason.

(j) The board is subject to the open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967, as amended (Article 6252-17, Vernon's Texas Civil Statutes), and the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes).

(k) The board may recognize, prepare, or implement continuing education programs for polygraph examiners and trainees. Participation in the programs is voluntary.

SECTION 2. Section 6, Polygraph Examiners Act (Article 4413(29cc), Vernon's Texas Civil Statutes), is amended by amending Subsection (a) and by adding Subsections (d) and (e) to read as follows:

(a) The board shall issue regulations consistent with the provisions of this Act for the administration and enforcement of this Act and shall prescribe forms which shall be issued in connection therewith. The board may not adopt rules restricting competitive bidding or advertising by a licensee of the board except to prohibit false, misleading, or deceptive practices by the licensee. The board may not include in its rules to prohibit false, misleading, or deceptive practices by a licensee a rule that:

(1) restricts the licensee's use of any medium for advertising;

(2) restricts the licensee's personal appearance or use of his voice in an advertisement;

(3) relates to the size or duration of an advertisement by the licensee; or

(4) restricts the licensee's advertisement under a trade name.

(d) During each fiscal biennium, the state auditor shall audit the financial transactions of the Department of Public Safety that relate to the administration of this Act.

(e) On or before January 1 of each year, the Department of Public Safety shall make in writing to the governor and the presiding officer of each house of the legislature a complete and detailed report accounting for all funds received and disbursed by the department under this Act during the preceding year.

(f) If the appropriate standing committees of both houses of the legislature acting under Subsection (g), Section 5, Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes), transmit to the board statements opposing adoption of a rule under that section, the rule may not take effect, or if the rule has already taken effect, the rule is repealed effective on the date the board receives the committee's statements.

SECTION 3. Sections 8, 9, 12, 14, 17, 19, 22, 23, and 26, Polygraph Examiners Act, as amended (Article 4413(29cc), Vernon's Texas Civil Statutes), are amended to read as follows:

Sec. 8. EXAMINER'S LICENSE QUALIFICATIONS. (a) A person is qualified to receive a license as an examiner

(1) ~~who is at least 21 years of age; and~~
(2) ~~who is a citizen of the United States; and~~
(3) ~~who establishes that he is a person of honesty, truthfulness, integrity, and moral fitness; and~~

(4) who has not been convicted of a felony or a misdemeanor involving moral turpitude; and

(2) ~~(5)~~ who holds a baccalaureate degree from a college or university accredited by an organization that the board designates and that the board determines has accreditation standards to ensure a high level of scholarship for students ~~[the American Association of Collegiate Registrars and Admissions Officers]~~, or in lieu thereof, has five consecutive years of active investigative experience immediately preceding his application; and

(3) ~~(6)~~ who is a graduate of a polygraph examiners course approved by the board and has satisfactorily completed not less than six months of internship training, provided that if the applicant is not a graduate of an approved polygraph examiners course, satisfactory completion of not less than 12 months of internship training may satisfy this subdivision; and

(4) ~~(7)~~ who has passed an examination conducted by the board, or under its supervision, to determine his competency to obtain a license to practice as an examiner.

(b) ~~(8)~~ Prior to the issuance of a license, the applicant must furnish to the board evidence of a surety bond or insurance policy. Said surety bond or insurance policy shall be in the sum of \$5,000.00 and shall be conditioned that the obligor therein will pay to the extent of the face amount of such surety bond or insurance policy all judgments which may be recovered against the licensee by reason of any wrongful or illegal acts committed by him in the course of his examinations.

(c) The board by rule shall establish the criteria by which it determines whether an applicant complies with the active investigative experience requirement established by Subdivision (2) of Subsection (a) of this section.

Sec. 9. ACQUISITION OF LICENSE BY PRESENT EXAMINERS. On the effective date of this Act, any person who held a license issued by the board ~~[Board]~~ established or attempted to be established by Chapter 441, Acts of the 59th Legislature, Regular Session, 1965 [Acts, 1965, 59th Leg., R.S., Ch. 441, p. 888], and whose license was in effect on the date on which said Act was held invalid, shall be automatically licensed hereunder until such date as his license under the Act aforesaid has expired and thereafter may renew his license on payment of the fee herein provided. The applicant must also satisfy the provisions of Subsection (b) of Section 8 ~~(8)~~ of this Act.

Sec. 12. APPLICANT WITH OUT-OF-STATE LICENSE. The board may waive any license requirement for an applicant with a valid license from another state having license requirements substantially equivalent to those of this state. ~~[An applicant who is a polygraph examiner licensed under the laws of another state or territory of the United States may be issued a license without examination by the board, in its discretion, upon payment of a fee of \$60 and the production of satisfactory proof that~~

(1) ~~he is at least 21 years of age; and~~
(2) ~~he is a citizen of the United States; and~~
(3) ~~he is of good moral character; and~~
(4) ~~the requirements for the licensing of polygraph examiner in such particular state or territory of the United States were at the date of the applicant's licensing therein substantially equivalent to the requirements now in force in this state; and~~

~~[(5) the applicant had lawfully engaged in the administration of polygraph examinations under the laws of such state or territory for at least two years prior to his application for license hereunder; and~~

~~[(6) such other state or territory grants similar reciprocity to license holders of this state; and~~

~~[(7) he has complied with Section 11 of this Act.]~~

Sec. 14. ~~[EXAMINATION AND LICENSE]~~ FEES. (a) The board shall establish reasonable and necessary fees for the administration of this Act, in amounts not to exceed:

1. Polygraph examiners license	225
2. Internship license	115
3. Duplicate license	40
4. Renewal fee for examiner's license	210
5. Extension or renewal of an internship license	40
6. Examination fee	75

~~[The fee to be paid by an applicant for an examination to determine his fitness to receive a polygraph examiner's license is \$20, which is not to be credited as payment against the license fee.]~~

~~(b) The fee to be paid for an original polygraph examiner's license is \$60.~~

~~[(c) The fee to be paid for an internship license is \$30.~~

~~[(d) The fee to be paid for the issuance of a duplicate polygraph examiner's license is \$10.~~

~~[(e) The fee to be paid for a polygraph examiner's renewal license is \$25.~~

~~[(f) The fee to be paid for the extension or renewal of an internship license is \$25.~~

~~[(g) The fee to be paid for a duplicate internship license is \$10.~~

~~[(h)] The fees required by this Act may be paid by the governmental agency employing the examiner.~~

Sec. 17. TERMINATION AND RENEWAL OF EXAMINER'S LICENSE. (a) Each polygraph examiner's license shall be issued for the term of one year and shall, unless suspended or revoked, be renewed annually.

(b) A person may renew his unexpired license by paying to the board before the expiration date of the license the required renewal fee.

(c) If a person's license has been expired for not more than 90 days, the person may renew the license by paying to the board the required renewal fee and a fee that is one-half of the examination fee for the license.

(d) If a person's license has been expired for more than 90 days but less than two years, the person may renew the license by paying to the board all unpaid renewal fees and a fee that is equal to the examination fee for the license.

(e) If a person's license has been expired for two years or more, the person may not renew the license. The person may obtain a new license by submitting to reexamination and complying with the requirements and procedures for obtaining an original license.

(f) A ~~[as prescribed by the board. A polygraph examiner whose license has expired may at any time within two years after the expiration thereof obtain a renewal license without examination by making a renewal application therefor and satisfying Section 8(2), (3), and (4). However, any]~~ polygraph examiner whose license expired while he was in the federal service on active duty with the armed forces of the United States, or the national guard called into service or training, or in training or education under the supervision of the United States preliminary to induction into the military service, may have his license renewed without examination if within two years after termination of such service, training, or education except under condition other than honorable, he pays to

the board the required renewal fee and furnishes the board with an affidavit to the effect that he has been so engaged and that his service, training, or education has been so terminated. ~~[Section 8(2), (3) and (4) of this Act must also be satisfied.]~~

Sec. 19. REFUSAL, PROBATION, REPRIMAND, SUSPENSION, REVOCATION—GROUNDS. The board shall ~~may~~ refuse to issue a license, shall revoke or suspend a license, shall reprimand a licensee, or may probate a license suspension ~~[or may suspend or revoke a license]~~ on any one or more of the following grounds:

(1) for failing to inform a subject to be examined as to the nature of the examination;

(2) for failing to inform a subject to be examined that his participation in the examination is voluntary;

(3) material misstatement in the application for original license or in the application for any renewal license under this Act;

(4) wilful disregard or violation of this Act or of any regulation or rule issued pursuant thereto, including, but not limited to, wilfully making a false report concerning an examination for polygraph examination purposes;

(5) if the holder of any license has been adjudged guilty of the commission of a felony or a misdemeanor involving moral turpitude;

(6) making any wilful misrepresentation or false promises or causing to be printed any false or misleading advertisement for the purpose of directly or indirectly obtaining business or trainees;

(7) having demonstrated unworthiness or incompetency to act as a polygraph examiner as defined by this Act;

(8) allowing one's license under this Act to be used by any unlicensed person in violation of the provisions of this Act;

(9) wilfully aiding or abetting another in the violation of this Act or any regulation or rule issued pursuant thereto;

(10) where the license holder has been adjudged as a habitual drunkard or mentally incompetent as provided in the Probate Code;

(11) failing, within a reasonable time, to provide information requested by the secretary as the result of a formal complaint to the board which would indicate a violation of this Act; ~~[or]~~

(12) failing to inform the subject of the results of the examination if so requested; or

(13) violating Subsection (a) of Section 19A of this Act relating to the confidentiality of information acquired from an examination.

Sec. 22. BOARD HEARING. (a) ~~If the board proposes to refuse a person's application for a license or to suspend or revoke a person's license, the person is entitled to a hearing before the board. [When there is cause to refuse an application or to suspend or revoke the license of any polygraph examiner, the board shall, not less than 30 days before refusal, suspension, or revocation action is taken, notify such person in writing, in person or by certified mail at the last address supplied to the board by such person, of such impending refusal, suspension, or revocation, the reasons therefor, and of his right to an administrative hearing for the purpose of determining whether or not the evidence is sufficient to warrant the refusal, suspension, or revocation action proposed to be taken by the board. If, within 20 days after the personal service of such notice or such notice has been deposited in the United States mail, such person has not made a written request to the board for this administrative hearing, the board is authorized to suspend or revoke the polygraph examiner's license of such person without a hearing. Upon receipt by the board of such written request of such person within the 20 day period as set out above, an~~

~~opportunity for an administrative hearing shall be afforded as early as is practicable. In no case shall the hearing be held less than 10 days after written notification thereof, including a copy of the charges, shall have been given the person by personal service or by certified mail sent to the last address supplied to the board by the applicant or licensee. The administrative hearing in such cases shall be before the board.]~~

~~(b) Proceedings for the refusal, suspension, or revocation of a license are governed by the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes). [The board shall conduct the administrative hearings and it is authorized to administer oaths and issue subpoenas for the attendance of witnesses and the production of relevant books, papers, documents, etc. On the basis of the evidence submitted at the hearing, the board shall take whatever action it deems necessary in refusing the application or suspending or revoking the license.]~~

Sec. 23. JUDICIAL REVIEW. Any person dissatisfied with the action of the board in refusing his application or suspending or revoking his license, or any other action of the board, may appeal the action of the board by filing a petition within the appropriate time ~~[30 days thereafter]~~ in the district court in the county where the person resides or in the district court of Travis County, Texas. An appeal of an action of the board is governed by the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes). Judicial review of an action of the board shall be conducted under the substantial evidence rule. [In all appeals prosecuted in any of the courts of this state pursuant to the provisions of this Act, such trials shall be de novo as that term is used and understood in appeals from justice of the peace courts to county courts. When such an appeal is filed and the court thereby acquires jurisdiction, all administrative or executive action taken prior thereto shall be null and void and of no force and effect, and the rights of the parties thereto shall be determined by the court upon a trial of the matters in controversy under rules governing the trial of other civil suits in the same manner and to the same extent as though the matter had been committed to the courts in the first instance and there had been no intervening administrative or executive action or decision. Under no circumstances shall the substantial evidence rule as interpreted and applied by the courts of Texas in other cases ever be used or applied to appeals prosecuted under the provisions of this Act. The Legislature hereby specifically declares that the provisions of this section shall not be severable from the balance of this Act, and further specifically declares that this Act would not have been passed without the inclusion of this section. If this section, or any part thereof, is for any reason ever held by any court to be invalid, unconstitutional or inoperative in any way, such holding shall apply to this entire Act, and in such event this entire Act shall be null, void and of no force and effect.]

Sec. 26. PENALTIES. (a) Any person who violates any provision of this Act or any person who falsely states or represents that he has been or is a polygraph examiner or trainee or that he is qualified to apply instrumentation to the detection of deception or verification of truth of statements shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than \$100 nor more than \$1,000 or by imprisonment in the county jail for a term of not to exceed six months, or both.

(b) A person commits an offense if the person intentionally, knowingly, recklessly, or with criminal negligence violates Section 19A of this Act relating to the confidentiality of information acquired from a polygraph examination. An offense under this subsection is a Class B misdemeanor.

SECTION 4. The Polygraph Examiners Act, as amended (Article 4413(29cc), Vernon's Texas Civil Statutes), is amended by adding Sections 13A, 19A, 19B, and 24A to read as follows:

Sec. 13A. NOTICE AND ANALYSIS OF EXAMINATION RESULTS.

(a) Within 30 days after the date a license examination is administered under this Act, the board shall notify each examinee of the results of the examination. However, if an examination is graded or reviewed by a national testing service, the board shall notify each examinee of the results of the examination within two weeks after the date the board receives the results from the testing service. If it is foreseeable that the notice of the examination results will be delayed for more than 90 days after the examination date, the board shall notify each examinee of the reason for the delay before the 90th day.

(b) If requested in writing by a person who fails a license examination administered under this Act, the board shall furnish the person with an analysis of the person's performance on the examination.

Sec. 19A. CONFIDENTIALITY OF EXAMINATION RESULTS. (a) Except as provided by Subsection (c) of this section, a licensed polygraph examiner, licensed trainee, or employee of a licensed polygraph examiner may not disclose to another person information acquired from a polygraph examination.

(b) Except as provided by Subsection (d) of this section, a person for whom a polygraph examination is conducted or an employee of the person may not disclose to another person information acquired from the examination.

(c) A licensed polygraph examiner, licensed trainee, or employee of a licensed polygraph examiner may disclose information acquired from a polygraph examination to:

(1) the examinee or any other person specifically designated in writing by the examinee;

(2) the person, firm, corporation, partnership, business entity, or governmental agency that requested the examination;

(3) members or their agents of governmental agencies such as federal, state, county, or municipal agencies that license, supervise, or control the activities of polygraph examiners;

(4) other polygraph examiners in private consultation, all of whom will adhere to this section; or

(5) others as may be required by due process of law.

(d) A person for whom a polygraph examination is conducted or an employee of the person may disclose information acquired from the examination to a person described by Subdivisions (1) through (5) of Subsection (c) of this section.

(e) The board or any other governmental agency that acquires information from a polygraph examination under Subdivision (3) of Subsection (c) of this section shall keep the information confidential.

Sec. 19B. INFORMATION ABOUT COMPLAINTS. (a) The board shall keep an information file about each complaint filed with the board relating to a licensee.

(b) If a written complaint is filed with the board relating to a licensee, the board, at least as frequently as quarterly, shall notify the complainant of the status of the complaint until its final disposition unless the notification would jeopardize an undercover investigation.

Sec. 24A. CONSUMER INFORMATION. (a) The board shall prepare information of consumer interest describing the regulatory functions of the board and the board's procedures by which consumer complaints are filed with and resolved by the board. The board shall make the information available to the general public and appropriate state agencies.

(b) Each written contract for the services in this state of a licensed polygraph examiner and each waiver of liability that is signed by the subject of a polygraph examination shall contain the name, mailing address, and telephone number of the board.

SECTION 5. A rule adopted by the Polygraph Examiners Board before September 1, 1981, that conflicts with the Polygraph Examiners Act (Article 4413(29cc), Vernon's Texas Civil Statutes), as amended by this Act, is void. Within 90 days after September 1, 1981, the board shall repeal the rule.

SECTION 6. (a) A person holding office as a member of the Polygraph Examiners Board on the effective date of this Act continues to hold the office for the term for which the member was originally appointed.

(b) The governor shall appoint two public members to fill the offices of the incumbent members who are not polygraph examiners in the commercial field and whose terms expire June 18, 1983, and June 18, 1985.

SECTION 7. This Act takes effect September 1, 1981.

SECTION 8. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The amendment was read.

Senator Doggett moved to concur in the House amendment.

The motion prevailed.

SENATE BILL 29 WITH HOUSE AMENDMENTS

Senator Brooks called S.B. 29 from the President's table for consideration of the House amendments to the bill.

The President laid the bill and the House amendments before the Senate.

Committee Amendment No. 1 - Hackney

Substitute the following for S.B. 29:

A BILL TO BE ENTITLED AN ACT

relating to supervision of the Texas School for the Deaf and the Texas School for the Blind.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 11.03, Texas Education Code, as amended by Chapters 691 and 827, Acts of the 66th Legislature, 1979, is amended to read as follows:

Sec. 11.03. SUPERVISION OF THE TEXAS SCHOOL FOR THE DEAF. (a) The Texas School for the Deaf is governed by a nine-member board appointed by the governor in accordance with this section and confirmed by the senate. Three of the members must be deaf persons, three must each be a parent of a deaf person, and three must be experienced in working with deaf persons. A person may not serve simultaneously on the board and the Texas Commission for the Deaf. ~~[The State Board of Education shall nominate three persons for each position, and the governor shall appoint one of those nominees to each position.]~~

(b) ~~Members [Except as provided for the initial appointees, members] of the board serve for terms of six years, with the terms of three members expiring on January 31 of each odd-numbered year. [In making the initial appointments, the governor shall designate three members to serve for terms expiring in 1981, three in 1983, and three in 1985. The initial appointments shall be made in such a manner that the different categories of persons to serve on the board will also be staggered as to length of their terms.]~~

(c) Members of the board serve without salary but are entitled to reimbursement for actual and necessary expenses incurred in carrying out official duties.

(d) The board shall organize and conduct itself in the same manner as an independent school district board of trustees.

(e) ~~The board shall prepare and present the annual budget for the school to the [State Board of Education for approval and presentation to the] legislature.~~

(f) ~~Actions of the board may be appealed to the State Board of Education in the manner provided for appeal of independent school district actions [and the State Board of Education may review any of the activities of the board].~~

(g) The board has exclusive jurisdiction over the physical assets of the school and shall administer and expend appropriations made for the benefit of the school.

(h) The superintendent of the school is appointed by and serves at the pleasure of the governing board of the school.

(i) ~~(h)~~ The Texas School for the Deaf shall:

(1) provide educational services on a day or residential basis to deaf students for whom adequate educational opportunities are unavailable in their local or regional programs;

(2) provide short-term services to deaf students so that they may be better able to benefit from educational services available in their local communities;

(3) provide services for multiply handicapped deaf students who cannot be effectively assisted through community programs but whose developmental capacities are such that they should not be admitted to residential institutions operated by the Texas Department of Mental Health and Mental Retardation;

(4) be a primary resource to school districts for promoting excellence in educational services for hearing-impaired students;

(5) be a training and staff development resource for those at the community level who are involved in providing educational and related services to hearing-impaired students; and

(6) be a research and demonstration facility to improve methods of providing educational services to meet the current and future needs of hearing-impaired students.

(j) The state auditor shall audit the Texas School for the Deaf at least biennially, and shall audit the school annually if requested by resolution of the board.

(k) The board shall prepare and disseminate to interested persons an annual report describing the programmatic and fiscal aspects of the school.

(l) The executive director of the Texas Commission for the Deaf, or his representative, serves as a voting member of any policy and planning committee or task force of the Texas School for the Deaf.

SECTION 2. Section 11.061, Texas Education Code, as amended, is amended by amending Subsections (a), (b), (e), and (f) and by adding Subsection (m) to read as follows:

(a) The Texas School for the Blind is governed by a nine-member board appointed by the governor in accordance with this section and confirmed by the senate. Three of the members must be blind persons, three must each be a parent of a blind person, and three must be experienced in working with blind persons. A person may not serve simultaneously on the board and the State Commission for the Blind. ~~[The State Board of Education shall nominate three persons for each position, and the governor shall appoint one of those nominees to each position.]~~

(b) ~~Members~~ ~~[Except as provided for the initial appointees, members]~~ of the board serve for terms of six years, with the terms of three members expiring on January 31 of each odd-numbered year. ~~[In making the initial appointments to the board, the governor shall designate three members to serve for terms expiring in 1981, three in 1983, and three in 1985. The initial appointments shall be made in such a manner that the different categories of persons to serve on the board will also be staggered as to the length of their terms.]~~

(c) The board shall prepare and present the annual budget for the school to the ~~[State Board of Education for approval or presentation to the]~~ legislature.

(f) Actions of the board may be appealed to the State Board of Education in the manner provided for appeal of independent school district actions ~~[and the State Board of Education may review any of the activities of the board].~~

(m) The board has exclusive jurisdiction over the physical assets of the school and shall administer and expend appropriations made for the benefit of the school.

SECTION 3. Section 11.07, Texas Education Code, as amended, is amended by adding Subsection (c) to read as follows:

(c) The superintendent is appointed by and serves at the pleasure of the governing board of the school.

SECTION 4. Sections 11.031 and 11.041, Texas Education Code, are repealed.

SECTION 5. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Floor Amendment No. 1 - Von Dohlen

Amend C.S.S.B. 29 on page 5 by striking Section 5 and substituting the following:

SECTION 5. This Act takes effect September 1, 1981.

SECTION 6. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The amendments were read.

Senator Brooks moved to concur in the House amendments.

The motion prevailed.

SENATE BILL 1024 WITH HOUSE AMENDMENT

Senator Ogg called S.B. 1024 from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

Committee Amendment No. 1 - Colbert

Amend Senate Bill 1024 as follows:

(1) On page 1, line 20 and 21, strike the words "be upon terms deemed advisable by the commissioners court and" and insert in lieu thereof the words "be drawn in consultation with the County Historical Commission and shall specify duties and obligations of the lessee, including but not limited to maintenance, repairs, provision for public access, restrictions on inappropriate commercial uses, and any other provision designed to further the preservation of historic, cultural, or architectural aspects of the Landmark. Such contracts or leases".

(2) On page 1, line 23, after the word "services" and before the ";", insert the following language: "if such contract is with a non-profit organization chartered in Texas".

The amendment was read.

Senator Ogg moved to concur in the House amendment.

The motion prevailed.

SENATE BILL 232 WITH HOUSE AMENDMENTS

Senator Howard called S.B. 232 from the President's table for consideration of the House amendments to the bill.

The President laid the bill and the House amendments before the Senate.

Committee Amendment No. 1 - Evans

Substitute the following for S.B. 232:

**A BILL TO BE ENTITLED
AN ACT**

relating to continuation of the State Board of Veterinary Medical Examiners and regulation of the practice of veterinary medicine.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Sections 3, 5, 6, 7, 8, 10, 12, 13, 14, 15, 16, 19, and 20, The Veterinary Licensing Act, as amended (Article 7465a, Vernon's Texas Civil Statutes), are amended to read as follows:

Sec. 3. The provisions of this Act shall not apply nor shall the following be construed as the practice of veterinary medicine:

(1) Treatment or caring for animals in any manner personally by the owner thereof, or by any employee of the owner thereof.

(2) Performance of the operation of male castration on domestic animals, or docking or earmarking of domestic animals.

(3) Performance of the operation of dehorning cattle, or the spaying of large animals, or operation in aid of the birth process in large animals.

(4) Drenching and spraying of domestic animals for internal or external parasites, or vaccination for black-leg, shipping fever, or sore mouth.

(5) Recommendation by a retail distributor of a medicine, remedy or insecticide which is adequately labeled and has been duly registered with the Texas State Department of Health as required by the Texas Livestock Remedy Act when the retail distributor is advised by the customer of the type of ailment which he wishes to treat.

(6) Treatment and caring for poultry and rabbits.

(7) Branding animals in any manner.

(8) Acts performed by persons who are full-time students of an accredited college of veterinary medicine and who are on a college extern or preceptor program if the acts are performed under direct supervision of a licensee employing the person.

Sec. 5. STATE BOARD OF VETERINARY MEDICAL EXAMINERS.

(a) The Board consists of six members appointed by the Governor for six-year terms.

(b) Appointments shall be made without regard to the race, creed, sex, religion, or national origin of the appointees. Five members must be licensed veterinarians and one member must be a member of the general public.

(c) To be eligible for appointment to the Board as a licensed veterinarian member, a person must:

(1) have resided in the state and practiced veterinary medicine for the six years next preceding his appointment;

(2) be of good repute; and

(3) not be a member of the faculty of any veterinary medical college or of the veterinary medical department of any college or have a financial interest in a veterinary medical college.

(d) A person is not eligible for appointment as a public member if the person or the person's spouse:

(1) is licensed by an occupational regulatory agency in the field of health care;

(2) is employed by or participates in the management of a business entity or other organization that provides health-care services or that sells, manufactures, or distributes health-care supplies or equipment; or

(3) owns, controls, or has, directly or indirectly, more than a 10 percent interest in a business entity or other organization that provides health-care services or that sells, manufactures, or distributes health-care supplies or equipment.

(e) [(e)] A person appointed to the Board qualifies for office by taking the constitutional oath of office. After taking the oath, he shall file a signed copy of it with the Secretary of State.

(f) [(d)] The Governor shall fill by appointment vacancies on the Board resulting from death or resignation of a member. The person appointed to fill a vacancy serves for the unexpired portion of the vacated term.

(g) [(e)] At its first meeting each year the Board shall elect from its number a president and any other officers it considers necessary or convenient. Four members of the Board constitute a quorum for the transaction of Board business.

(h) [(f)] Each Board member is entitled to a per diem as set by legislative appropriation for each day that the member engages in the business of the Board [compensation in the amount of \$25 a day for each day he is engaged in the duties of his office]. Except for actual and necessary travel expenses, a

~~[Each] member may not [is also entitled to] be reimbursed for [his actual, necessary] expenses incurred while performing the duties of his office.~~

~~(i) [(g)] The State Board of Veterinary Medical Examiners is subject to the Texas Sunset Act, as amended (Article 5429k, Vernon's Texas Civil Statutes); and unless continued in existence as provided by that Act the board is abolished, and this Act expires effective September 1, 1993 [1981].~~

~~(j) The Board is subject to the open-meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967, as amended (Article 6252-17, Vernon's Texas Civil Statutes), and the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes).~~

~~(k) A member or employee of the Board may not be an officer, employee, or paid consultant of a trade association in the veterinary medical industry.~~

~~(l) A member or employee of the Board may not be related within the second degree by affinity or consanguinity to a person who is an officer, employee, or paid consultant of a trade association in the regulated industry.~~

~~(m) A person who is required to register as a lobbyist under Chapter 422, Acts of the 63rd Legislature, Regular Session, 1973, as amended (Article 6252-9c, Vernon's Texas Civil Statutes), may not serve as a member of the Board or act as the general counsel to the Board.~~

~~(n) It is a ground for removal from the Board if a member:~~

~~(1) does not have at the time of appointment the qualifications required by Subsection (b) or (c) of this section for appointment to the Board;~~

~~(2) does not maintain during his service on the Board the qualifications required by Subsection (b) or (c) of this section for appointment to the Board;~~

~~(3) violates a prohibition established by Subsection (j), (k), or (l) of this section; or~~

~~(4) fails to attend at least half of the regularly scheduled Board meetings held in a calendar year, excluding meetings held while the person was not a member of the Board.~~

~~(o) The validity of an action of the Board is not affected by the fact that it was taken when a ground for removal of a member of the Board existed.~~

Sec. 6. (a) The Board may employ an executive secretary and such other persons as it deems advisable to carry out the purposes of this Act, and shall require the executive secretary, charged with the safekeeping of the moneys and proper disbursement of the veterinary fund provided for in this Act, to file with the Board a surety bond in an amount not less than Five Thousand Dollars (\$5,000), conditioned on the faithful performance of the duties of his office.

(b) The executive secretary or his designee shall develop an intra-agency career ladder program, one part of which shall be the intra-agency posting of all nonentry-level positions for at least 10 days before any public posting.

(c) The executive secretary or his designee shall develop a system of annual performance evaluations based on measurable job tasks. All merit pay authorized by the executive secretary must be based on the system established under this subsection.

Sec. 7. (a) The Board may make, alter, or amend such rules and regulations as may be necessary or desirable to carry into effect the provisions of this Act.

(b) The Board may require its licensees to maintain a record-keeping system for certain controlled substances prescribed by the Board that includes the quantities and date of purchase, quantities and date dispensed, quantities and date administered, balance on hand, the name and address of the client and patient receiving the drugs, and the reason for dispensing or administering the drugs to such patient. The records are subject to review by law enforcement

agencies and by representatives of the Board. A failure to keep such records shall be grounds for revoking, cancelling, suspending, or probating the license of any practitioner of veterinary medicine.

Sec. 8. (a) The Board may from time to time adopt, alter, or amend rules of professional conduct appropriate to establish and maintain a high standard of integrity, skills and practice in the profession of veterinary medicine.

(b) The Board may not adopt rules restricting competitive bidding or advertising by a person regulated by the Board except to prohibit false, misleading, or deceptive practices by the person. The Board may not include in its rules to prohibit false, misleading, or deceptive practices by a person regulated by the Board a rule that:

(1) restricts the person's use of any medium for advertising;

(2) restricts the person's personal appearance or use of his voice in an advertisement;

(3) relates to the size or duration of an advertisement by the person; or

(4) restricts the person's advertisement under a trade name. [Provided, however, that all such rules and regulations shall not be effective until they are approved by the Attorney General of this state and filed with the Secretary of the State of Texas.]

(c) If the appropriate standing committees of both houses of the legislature acting under Subsection (g), Section 5, Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes), transmit to the board/commission statements opposing adoption of a rule under that section, the rule may not take effect, or if the rule has already taken effect, the rule is repealed effective on the date the board/commission receives the committee's statements.

Sec. 10. [The following persons are qualified to be licensed veterinarians:] (a) Any person not previously licensed in this State is qualified to be licensed, provided:

(1) [He is of good moral character;

(2) he is a citizen of the United States;

(3) he has attained the age of majority [is at least twenty-one (21) years of age];

(2) [(4)] he is a graduate of a reputable school or college of veterinary medicine as approved by the Board;

(3) [(5)] he successfully completes the examination conducted by the Board; and

(4) [(6)] the Board does not refuse issuance of the license as provided in Section 14 (Refusing Examination, License or Renewal).

(b) The Board may waive any license requirement for an applicant with a valid license from another state having license requirements substantially equivalent to those of this State. [Any person licensed to practice veterinary medicine by authorities other than those in Texas, provided such license is in full force and effect, may in each instance apply for a license, and, in the discretion of the Board, be licensed under the terms of reciprocity agreements. The Board may arrange for reciprocity in license with the proper authorities of other states and territories of the United States having requirements substantially equal to those established by subsection (a) of this Section.]

Sec. 12. (a) The Board shall hold regular meetings at least twice each year for the holding of examinations as provided in this Act, at such times and places as it deems convenient for applicants for examinations. Notice of meetings for holding examinations shall be given by publication in such newspapers or periodicals as the Board may select, and the Board shall examine all qualified applications for examinations as follows:

(1) ~~(a)~~ Examinations shall be on subjects and operations pertaining to veterinary medicine including veterinary anatomy, veterinary pathology, chemistry, veterinary obstetrics, sanitary science, veterinary practice, veterinary jurisprudence, veterinary physiology and bacteriology and such other subjects as are regularly taught in reputable schools of veterinary medicine.

(2) ~~(b)~~ Examinations may be given orally, in writing, or a practical demonstration of the applicant's skill, or any combination of these as the Board may determine.

(3) ~~(c)~~ Applicants shall demonstrate such standard of proficiency as the Board may determine is essential for a qualified veterinarian.

(b) Within 30 days after the date a licensing examination is administered under this Act, the Board shall notify each examinee of the results of the examination. However, if an examination is graded or reviewed by a national testing service, the Board shall notify each examinee of the results of the examination within two weeks after the date the Board receives the results from the testing service. If the notice of the examination results will be delayed for more than 90 days after the examination date, the Board shall notify the examinee of the reason for the delay before the 90th day.

(c) If requested in writing by a person who fails the licensing examination administered under this Act, the Board shall furnish the person with an analysis of the person's performance on the examination.

Sec. 13. (a) Licenses shall expire March 1st of each calendar year, and any licensee may renew his license on or before March 1st by making written application to the Board setting forth such facts as the Board may require, and by paying the required fee.

(b) A person may renew an unexpired license by paying to the Board before the expiration date of the license the required renewal fee. If a person's license has been expired for not more than 90 days, the person may renew the license by paying to the Board the required renewal fee and a fee that is one-half (1/2) of the examination fee for the license. If a person's license has been expired for more than 90 days but less than two years, the person may renew the license by paying to the Board all unpaid renewal fees and a fee that is equal to the examination fee for the license. If a person's license has been expired for two years or more, the person may not renew the license. The person may obtain a new license by submitting to reexamination and complying with the requirements and procedures for obtaining an original license.

(c) The ~~[Any person whose license expires, or has expired prior to the effective date of this Act, may, in the discretion of the Board, renew his license by making written application to the Board setting forth such facts as the Board may require, and by payment of annual renewal fees in arrears and an additional fee of Five Dollars (\$5.00); provided, however, that the]~~ requirements governing the payment of the annual renewal fee and the penalty for late renewal shall not apply to licensees who are on active duty with the Armed Forces of the United States of America and who do not engage in private or civilian practice; provided further, licensees who are full-time members of the faculty of a reputable veterinary college or school in the State of Texas where such faculty members perform their services for the sole benefit of such school or college and who do not engage in private or civilian practice shall pay one-half (1/2) of the annual renewal fee fixed by the Board pursuant to law.

(d) The Board may recognize, prepare, or implement continuing education programs for veterinarians. Participation in the programs is voluntary.

Sec. 14. The Board shall ~~[may]~~ revoke or suspend a ~~[any]~~ license, place a person whose license has been suspended on probation, or reprimand a licensee, or may refuse to examine an applicant or ~~[.]~~ to issue a license or ~~[to issue]~~ a

renewal of a license, after notice and hearing as provided in Section 15 of this Act, or as provided by the rules of the Board, if it finds that an applicant or licensee:

- (a) Has presented to the Board dishonest or fraudulent evidence of qualification; has been guilty of illegal fraud or deception in the process of examination, or for the purpose of securing a license; or
- (b) Is chronically or habitually intoxicated or is addicted to drugs; or
- (c) Has engaged in dishonest or illegal practices in or connected with the practice of veterinary medicine; or
- (d) Has been convicted of a felony under the laws of this or any other state of the United States or of the United States; or
- (e) Has engaged in practices or conduct in connection with the practice of veterinary medicine which are violative of the standards of professional conduct as duly promulgated by the Board in accordance with law; or
- (f) Has permitted or allowed another to use his license, or certificate to practice veterinary medicine in this state, for the purpose of treating, or offering to treat, sick, injured or afflicted animals.

Sec. 15. If the Board proposes to refuse a person's application for a license, to suspend or revoke a person's license, or to place on probation or reprimand a licensee, the person is entitled to a hearing before the Board. The proceedings are governed by the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes). ~~Proceedings by the Board for the suspension or revocation of a license to practice veterinary medicine shall be as follows:~~

~~[(a) Proceedings may be instituted by any member of the Board or its employees or by any other person, by filing with the Board a sworn statement setting forth the grounds upon which the person presenting the statement believes the Board should revoke or suspend the license.~~

~~[(b) Upon the filing of such statement the executive secretary shall cause such investigation to be made as he deems necessary to determine the existence of such grounds, and if the executive secretary is of the opinion that grounds for suspension or revocation of a license exist, he shall cause appropriate entries to be made on a hearing docket and shall fix a time and place for hearing as may be prescribed by the rules of the Board.~~

~~[(c) The executive secretary shall cause notice of the hearing to be given the licensee, whose license is under consideration for suspension or revocation, not less than ten (10) days prior to the date fixed for hearing. Notice of hearing shall be served as is provided by law in civil cases in the District Courts of this State, and shall contain a brief statement of the statutory grounds upon which revocation or suspension of license is being considered; the date, time and place of hearing; and a statement that the licensee may appear and offer such evidence as is pertinent to the question of revocation or suspension of license.~~

~~[(d) The Board shall conduct hearings under such rules as the Board may adopt, and may administer oaths and subpoena and compel attendance of witnesses, deemed by the Board or the licensee to have knowledge which would aid the Board in reaching a proper decision and for enforcement of this Act, in the same manner as the District Courts of this State in civil proceedings.~~

~~[(e) The Board may, by a three fourths vote of the members of the Board present, evidenced by the signatures of such members on the order, reprimand a licensee or order an accused licensee's license suspended for such time as the Board may determine, or order his license revoked.]~~

Sec. 16. An appeal of an action of the Board is governed by the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes). Judicial review of an action of the Board shall be conducted under the substantial evidence rule.

~~[a. Within 30 days after issuance of an order by the Board suspending, revoking, or refusing to renew a license, the affected licensee or applicant may appeal such order to the district court of the county in which the applicant or licensee maintained his principal office for the practice of veterinary medicine on the dates of the commission of the acts relied upon by the Board to suspend or revoke a license or refuse to issue a renewal of a license. An applicant who has never practiced veterinary medicine may, within 30 days after issuance of an order by the Board refusing to examine the qualifications of the applicant or refusing to issue a license to the applicant, appeal the Board's order to the district court of the county in which the applicant resided at the time he made such application to the Board.]~~

~~[b. The trial in the district court shall be de novo as in cases of appeal from the justice courts to the county courts of the State of Texas. Either party may demand a jury to pass upon the disputed fact issues. The district court upon final hearing shall enter its judgment suspending or revoking the license or refusing to suspend or revoke the license as the court may determine. The Board or the applicant or licensee may appeal as in other civil cases.]~~

Sec. 19. The Board shall establish reasonable and necessary fees for the administration of this Act in amounts not to exceed:

1. Examination fee	\$200
2. Reciprocal license fee	\$200
3. Annual license renewal fee	\$ 85
4. Duplicate license fee	\$ 60

~~The board shall not maintain unnecessary fund balances, and fee amounts shall be set in accordance with this requirement. [Applicants for examinations shall pay to the Board a fee of not less than Twenty five Dollars (\$25) nor more than One Hundred Dollars (\$100), and an applicant for license under the reciprocal provisions of this Act shall pay to the Board a fee of not less than One Hundred Dollars (\$100) nor more than Two Hundred Dollars (\$200) at the time of application to the Board for such license. Licensees shall pay to the Board for annual renewal of licenses, a fee of not less than Ten Dollars (\$10), nor more than Sixty Dollars (\$60), as determined by the Board, based upon the needs of the Board, and a licensee whose license has been lost or destroyed shall be issued a duplicate license after application and upon payment of a fee of not less than Twenty Dollars (\$20) nor more than Forty Dollars (\$40). The amount of all fees provided for in this section shall be determined by the Board within the ranges specified in this section.]~~

Sec. 20. (a) All fees collected by the Board under this Act shall be placed in the State Treasury every thirty (30) days, as collected, to the credit of a special fund to be known as the "Veterinary Fund," and all expenditures from this fund shall be on order of the Board, on warrants issued by the State Comptroller for the purposes and in the amounts fixed by the Legislature in appropriation bills. On August 31st of each year, all money in excess of One Hundred Thousand Dollars (\$100,000) remaining in said "Veterinary Fund" shall revert to the General Revenue Fund of the State Treasury.

(b) The State Auditor shall audit the financial transactions of the Board at least once in each fiscal biennium.

(c) On or before January 1 of each year, the Board shall make in writing to the Governor and the Presiding Officer of each House of the Legislature a complete and detailed annual report accounting for all funds received and disbursed by the Board during the preceding year.

SECTION 2. The Veterinary Licensing Act, as amended (Article 7465a, Vernon's Texas Civil Statutes), is amended by adding Sections 18A and 18B to read as follows:

Sec. 18A. The Board shall prepare information of consumer interest describing the regulatory functions of the Board and the Board's procedures by which consumer complaints are filed with and resolved by the Board. The Board shall make the information available to the general public and appropriate state agencies. Each written contract for services in this state of a licensed veterinarian shall contain the name, mailing address, and telephone number of the Board.

Sec. 18B. (a) The Board shall maintain an information file about each complaint filed with the Board relating to a licensee.

(b) If a written complaint is filed with the Board relating to a licensee, the Board, at least as frequently as quarterly and until final disposition of the complaint, shall notify the parties to the complaint of the status of the complaint unless the notice would jeopardize an undercover investigation.

SECTION 3. A rule adopted by the State Board of Veterinary Medical Examiners before September 1, 1981, that conflicts with The Veterinary Licensing Act (Article 7465a, Vernon's Texas Civil Statutes), as amended by this Act, is void. Within 90 days after September 1, 1981, the board shall repeal the rule.

SECTION 4. (a) A person holding office as a member of the State Board of Veterinary Medical Examiners on the effective date of this Act continues to hold the office for the term for which the member was originally appointed.

(b) The governor shall appoint one public member to fill the office of an incumbent whose term expires in 1983.

SECTION 5. (a) This Act takes effect September 1, 1981.

(b) The requirements under Sections 6(b) and (c), The Veterinary Licensing Act (Article 7465a, Vernon's Texas Civil Statutes), as added by this Act, that the executive secretary of the board develop an intra-agency career ladder program and a system of annual performance evaluations, shall be implemented before September 1, 1982. The requirement of Section 6(c) that merit pay is to be based on this system shall be implemented before September 1, 1983.

SECTION 6. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Floor Amendment No. 1 - Uher

Amend C.S.S.B. 232, page 2 line 13, after the period, by striking the word "Six" and substituting the word "Seven" and on line 14 after the word "and" by striking the word "three" and substituting the word "two", and on page 3 line 19 change the word "four" to read "six".

also

On page 17 delete lines 4 and 5.

The amendments were read.

Senator Howard moved to concur in the House amendments.

The motion prevailed.

SENATE BILL 127 WITH HOUSE AMENDMENTS

Senator Meier called S.B. 127 from the President's table for consideration of the House amendments to the bill.

The President laid the bill and the House amendments before the Senate.

Committee Amendment No. 1 - Burnett

Substitute the following for S.B. 127:

A BILL TO BE ENTITLED
AN ACT

relating to the criminal justice division in the governor's office, the criminal justice division advisory board, the criminal justice planning fund, and to the allocation, distribution, reporting and use of additional court costs imposed for the conviction of certain crimes; authorizing appropriations; amending Chapter 417, Acts of the 60th Legislature, Regular Session, 1967, as amended (Article 4413 (32a), Vernon's Texas Civil Statutes), by adding Sections 6, 7, and 8; amending Chapter 935, Acts of the 62nd Legislature, Regular Session, 1971 (Article 1083, Vernon's Texas Code of Criminal Procedure), by amending Sections 1, 4, 7, 9, 10, and 11 and Subsection (a) of Section 3; and amending Subsections (e) and (f), Section 9B, Chapter 546, Acts of the 59th Legislature, Regular Session, 1965, as amended (Article 4413 (29aa), Vernon's Texas Civil Statutes).

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 417, Acts of the 60th Legislature, Regular Session, 1967, as amended (Article 4413(32a), Vernon's Texas Civil Statutes), is amended by adding Sections 6, 7, and 8 to read as follows:

"Section 6. (a) The governor shall establish a Criminal Justice Division within his office to perform the following duties:

"(1) to advise and assist the governor in developing policies, plans, programs, and proposed legislation for improving the coordination, administration, and effectiveness of the criminal justice system;

"(2) to administer the Criminal Justice Planning Fund;

"(3) to prepare a state comprehensive criminal justice plan, to update the plan annually, based on an analysis of the state's criminal justice problems and needs, and to encourage identical or substantially similar local and regional comprehensive criminal justice planning efforts.

"(4) to establish goals, priorities, and standards for programs and projects to improve the administration of justice and the efficiency of law enforcement, the judicial system, prosecution, criminal defense, and adult and juvenile corrections and rehabilitation;

"(5) to award grants from the Criminal Justice Planning Fund for programs and projects which address the goals, priorities, and standards established in the state comprehensive criminal justice plan and local and regional comprehensive criminal justice plans;

"(6) to apply for, obtain, and allocate for the purposes of this section any federal or other funds which may from time to time be made available for programs and projects which address the goals, priorities and standards established in or which assist the local and regional comprehensive criminal justice planning efforts;

"(7) to administer the funds provided by this Act in such a manner to ensure that grants received under this section do not supplant state or local funds;

"(8) to establish procedures and policies that require that the costs of programs and projects funded to local general purpose units of government be assumed over a period of five years out of local revenues;

"(9) to monitor and evaluate programs and projects funded under this section, to cooperate with and render technical assistance to state agencies, and local governments seeking to reduce crime or enhance the performance and operation of the criminal justice system, and to collect from any state or local government entity information, data, statistics, or other material necessary to carry out the purposes of this section;

"(10) to submit a biennial report to the Legislature reporting the division's activities during the preceding biennium including the comprehensive state criminal justice plans and such other studies, evaluations, crime data analyses, reports, or proposed legislation as the governor may deem appropriate or as the legislature may from time to time request; and

"(11) to perform such other duties as may be necessary to carry out the duties enumerated above and adopt such rules, regulations, and procedures as may be necessary.

"(b) The governor shall appoint a director for the division to serve at the pleasure of the Governor. The appointment is subject to senate confirmation.

"(c) When any local grant application is submitted to the Criminal Justice Division, it shall also be submitted to the local governing body for comment as determined by rules of the board.

"Section 7. (a) The Criminal Justice Division Advisory Board shall consist of 21 members. The governor, lieutenant governor and speaker of the house of representatives shall each appoint one-third of the members of the board. The board shall review and make recommendations to the governor on the projects and programs recommended for funding by staff of the division, the goals, priorities, and standards recommended by staff, the comprehensive criminal justice plan, and on such other matters related to criminal justice as the governor may request. The governor shall designate a chairman and vice-chairman of the board from among the members.

"(b) The members of the advisory board, including the chairman, shall be subject to confirmation by the senate, except elected officers. In this Act, 'elected officer' has the meaning given in Section 2, Chapter 421, Acts of the 63rd Legislature, Regular Session, 1973, as amended (Article 6252-9b, Vernon's Texas Civil Statutes). The chairman and members shall be selected from professional law enforcement, judicial, prosecution, and adult and juvenile corrections, postsecondary law enforcement education, and rehabilitation agency personnel, other criminal justice personnel, state and local officials, and private citizens. The members shall serve for two-year terms. Service on the board by state and local officials and employees shall be considered as an additional duty of their office or employment and shall not be construed as dual office holding.

"(c) Board members shall serve without compensation but shall be reimbursed for reasonable and necessary expenses incurred in performing their duties. In the event of a vacancy on the board the appointing authority shall appoint, subject to senate confirmation, a new member to fill the remaining portion of the unexpired term.

"(d) The Director of the Criminal Justice Division shall sit as an ex officio, nonvoting member of the board.

"(e) There shall be no approval of the release of grant funds for the acquisition or utilization of electronic surveillance equipment unless and until use of such equipment is authorized by the legislature. No grant funds shall be used in any manner to influence the outcome of any election or the passage or defeat of any legislative measure.

"Section 8. The Criminal Justice Division and any project funded by the Criminal Justice Division shall be subject to examination, inspection, and audit by the State Auditor's Office, the Legislative Budget Board, and the Governor's

Division of Planning Coordination to determine compliance with this Act and the approved annual comprehensive criminal justice plans.”

SECTION 2. Section 1, Chapter 935, Acts of the 62nd Legislature, Regular Session, 1971 (Article 1083, Vernon’s Texas Code of Criminal Procedure), is amended to read as follows:

“Section 1. The purpose of this Act is to continue in existence the special fund known as the Criminal Justice Planning Fund, to provide for the continued use of this fund for assistance to state and local law enforcement, judicial, prosecutorial, criminal defense, and adult and juvenile correctional and rehabilitative agencies; to provide for the continued administration of this fund; to provide for costs of court as the source of this fund, and to provide that the costs be borne in part by those who necessitate the establishment and maintenance of the criminal justice system. ~~[The purpose of this Act is to create and establish a special fund to be known as the Criminal Justice Planning Fund to provide the State and local funds required by Public Law 90-351, Title I, Omnibus Crime Control and Safe Streets Act of 1968, as amended, to provide for costs of court as the source of these funds, and to provide that the costs to be borne in part by those who necessitate the establishment and maintenance of the criminal justice system.]~~”

SECTION 3. Subsection (a), Section 3, Chapter 935, Acts of the 62nd Legislature, Regular Session, 1971 (Article 1083, Vernon’s Texas Code of Criminal Procedure), is amended to read as follows:

“(a) The sum of \$5.00 ~~[\$2.50]~~ shall be taxed as costs of court, in addition to other taxable court costs, upon conviction in each misdemeanor case in which original jurisdiction lies in courts whose jurisdiction is limited to a maximum fine of \$200.00 only.”

SECTION 4. Section 4, Chapter 935, Acts of the 62nd Legislature, Regular Session, 1971 (Article 1083, Vernon’s Texas Code of Criminal Procedure), is amended to read as follows:

“Section 4. The sum of \$10.00 ~~[\$5.00]~~ shall be taxed as costs of court in addition to other taxable court costs, upon conviction in each misdemeanor case, including cases in which probation is granted, and the sum of \$20.00 ~~[\$10.00]~~ shall be taxed as costs of court, in addition to other taxable court costs, upon conviction in each felony case, including cases in which probation is granted, in all cases in which original jurisdiction lies in courts whose jurisdiction is limited to fines and/or confinement in a jail or the department of corrections.”

SECTION 5. Section 7, Chapter 935, Acts of the 62nd Legislature, Regular Session, 1971 (Article 1083, Vernon’s Texas Code of Criminal Procedure), is amended to read as follows:

“Section 7. The custodians of the municipal and county treasuries with whom funds collected under this Act are deposited shall keep records of the amount of funds collected under this Act which are on deposit with them, and shall on or before the last day of the month following each calendar quarter period of three months ~~[the first day of January, April, July and October of each year]~~ remit to the Comptroller of Public Accounts funds collected under this Act during the preceding quarter. The municipal and county treasuries are hereby authorized to retain ten [five] percent (10%) [(5%)] of funds collected under this Act as a service fee for said collection.”

SECTION 6. Section 9, Chapter 935, Acts of the 62nd Legislature, Regular Session, 1971 (Article 1083, Vernon’s Texas Code of Criminal Procedure), is amended to read as follows:

“Section 9. The legislature shall determine and appropriate the necessary amount from the Criminal Justice Planning Fund to the Criminal Justice Division of the Governor’s Office for expenditure for state and local criminal

justice projects and for costs of administering the funds for such projects. The Criminal Justice Division shall allocate not less than twenty percent (20%) of these funds to juvenile justice programs. The distribution of the funds to local units of government shall be in an amount equal at least to the same percentage as local expenditures for criminal justice activities are to total state and local expenditures for criminal justice activities for the preceding state fiscal year. Funds shall be allocated among combinations of local units of government taking into consideration the population of the combination of local units of government as compared to the population of the state and the incidence of crime of the combination of local units of government as compared to the incidence of crime of the state. All funds collected shall be subject to audit by the comptroller of public accounts. All funds expended shall be subject to audit by the state auditor. Additionally, all funds collected or expended shall be subject to audit by the Governor's Division of Planning Coordination. ~~[The funds so deposited in the Criminal Justice Planning Fund are hereby appropriated to the expenditure of State and local matching funds required by Public Law 90-351, Title I, Omnibus Crime Control and Safe Streets Act of 1968 as amended by the Omnibus Crime Control Act of 1970 and determined by the appropriations of Congress to carry out the provisions of said Act. The expenditure of Criminal Justice Planning Funds shall be simultaneous with the expenditure of federal funds.]~~"

SECTION 7. Section 10, Chapter 935, Acts of the 62nd Legislature, Regular Session, 1971 (Article 1083, Vernon's Texas Code of Criminal Procedure), is amended to read as follows:

"Section 10. The Legislature may appropriate the unobligated ~~[unexpended]~~ balance of the Criminal Justice Planning Fund ~~[Funds]~~ for the preceding biennium for the improvement and upgrading of the criminal justice system ~~[as defined in the aforementioned federal Act]~~."

SECTION 8. Section 11, Chapter 935, Acts of the 62nd Legislature, Regular Session, 1971 (Article 1083, Vernon's Texas Code of Criminal Procedure), is amended to read as follows:

"Section 11. (a) All officers collecting funds due as costs under this Act shall file the reports required under Articles 1001 and 1002, Code of Criminal Procedure, 1925 ~~[1965]~~.

"(b) If no funds due as costs under this section have been collected in any quarter, the report required for each quarter shall be filed in the regular manner, and the report shall state that no funds due under this section were collected."

SECTION 9. Subsections (e) and (f), Section 9B, Chapter 546, Acts of the 59th Legislature, Regular Session, 1965, as amended (Article 4413 (29aa), Vernon's Texas Civil Statutes), are amended to read as follows:

"(e) (1) All officers collecting court costs under this section shall file the reports required by Articles 1001 and 1002, Code of Criminal Procedure, 1925.

"(2) If no funds due as costs under this section have been collected in any quarter, the report required for each quarter shall be filed in the regular manner, and the report shall state that no funds due under this section were collected."

"(f) The custodians of the municipal and county treasuries shall keep records of the amount of funds on deposit collected under this section, and shall on or before the last day of the month following each calendar quarter period of three months ~~[the tenth day of December, March, June and September of each year]~~ remit to the Comptroller of Public Accounts the funds collected under this section during the preceding quarter. Each city and county collecting funds under this section is hereby authorized to retain ~~ten~~ ~~[five]~~ percent ~~(10%)~~ ~~[(5%)]~~

of the funds collected by them as a service fee for said collection. All funds collected shall be subject to audit by the Comptroller of Public Accounts. All funds expended shall be subject to audit by the State Auditor. Additionally, all funds collected or expended shall be subject to audit by the Governor's Division of Planning Coordination."

SECTION 10. This Act takes effect September 1, 1981.

SECTION 11. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Floor Amendment No. 1 - Browder

Amend C.S.S.B. 127 on page 2, line 14, by inserting the following after the word "grants":

"to state agencies, units of local governments, school districts, and private, non-profit corporations"

The amendments were read.

(President Pro Tempore Traeger in Chair)

Senator Meier moved to concur in the House amendments.

Senator McKnight made the substitute motion that the Senate not concur in the House amendments, but that a Conference Committee be appointed to adjust the differences between the two Houses on the bill.

(President in Chair)

The motion prevailed by the following vote: Yeas 17, Nays 14.

Yeas: Blake, Brooks, Caperton, Doggett, Farabee, Glasgow, Mauzy, McKnight, Ogg, Parker, Sarpalius, Short, Snelson, Truan, Uribe, Vale, Williams.

Nays: Andujar, Brown, Harris, Howard, Jones, Kothmann, Leedom, Meier, Mengden, Richards, Santiesteban, Traeger, Travis, Wilson.

SENATE BILL 180 WITH HOUSE AMENDMENTS

Senator Snelson called S.B. 180 from the President's table for consideration of the House amendments to the bill.

The President laid the bill and the House amendments before the Senate.

Committee Amendment No. 1 - Atkinson

Amend S.B. 180 by renumbering Sections 9-11 as Sections 10-12 and adding a new Section 9 to read as follows:

SECTION 9. Subchapter B, Chapter 21, Texas Education Code, as amended, is amended by adding Section 21.0312 to read as follows:

Sec. 21.0312. TUITION FOR CERTAIN MILITARY DEPENDENTS. A school district may charge tuition for the attendance of a student who is not domiciled in Texas and resides in military housing that is exempt from taxation by the district. The tuition rate may not exceed an amount equal to the district's average expenditure per student from local funds.

Committee Amendment No. 2 - Coleman

Amend **S.B. 180**, page 8, by adding a new section to be numbered "10" and renumbering subsequent sections accordingly. The new Section 10 shall read as follows:

"SECTION 10. Amend the Texas Education Code, Chapter 16, by adding a new Subchapter K to read as follows:

Subchapter K. Urban School Finance Studies.

Sec. 16.503. By July 1, 1982, the Texas Education Agency shall have conducted a study of urban school finance and shall reflect the results of the study in the Agency's recommendations to the Legislative Budget Board regarding state appropriations for the 1983-84 and 1984-85 school years. The study shall include but not be limited to municipal property tax overburden, variance in purchasing power of the dollar in center city districts as compared to state average, high incidence of students who are educationally disadvantaged, culturally and linguistically different and physically and/or mentally handicapped, and program cost differentials associated with meeting the educational needs of students in vocational education, special education, compensatory education, bilingual education and other special programs selected by the Agency. The study shall also include the development of alternative finance formulas and/or formula adjustments for use by the Legislative Budget Board and the legislature in addressing the needs of urban school districts."

Committee Amendment No. 3 - Coleman

Amend **S.B. 180** by inserting a new SECTION 1 and renumbering the subsequent SECTIONS:

"SECTION 1. Section 16.102, Texas Education Code, as amended, is amended by adding a new subsection (o) to read as follows:

(o) Beginning in the 1983-1984 school year and each year thereafter, the total personnel unit allotment as determined by subsection (o) above shall be modified for districts which contain 33,000 or more students in average daily attendance and which had 35 percent or more students participating in the national school lunch program in the 1980-1981 school year, by multiplying the allotment by a factor of 1.05."

The amendments were read.

Senator Snelson moved that the Senate do not concur in the House amendments, but that a Conference Committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed.

The President asked if there were any motions to instruct the Conference Committee on **S.B. 180** before appointment.

There were no motions offered.

The President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Snelson, Chairman; Jones, Richards, Howard, Short.

SENATE RULE 103 SUSPENDED

On motion of Senator Mengden and by unanimous consent, Senate Rule 103 was suspended in order that the Committee on Natural Resources might consider **S.R. 722** today.

NOTICE OF CONSIDERATION OF NOMINATIONS

Senator McKnight gave notice that he would tomorrow at the conclusion of Morning Call submit to the Senate for consideration nominations to agencies, boards and commissions of the State.

(President Pro Tempore Traeger in Chair)

HOUSE BILL 2129 ON SECOND READING

On motion of Senator Williams and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 2129, Relating to assistance for veterans suffering from contact with certain toxic chemicals.

The bill was read second time.

Senator Williams offered the following committee amendment to the bill:

Amend **H.B. 2129**, engrossed, on line 17, page 2 by striking the word "longitudinal" and inserting in its place the word "epidemiological".

The committee amendment was read and was adopted.

Senator Williams offered the following committee amendment to the bill:

Amend the House Engrossment of **H.B. 2129** as follows:

- (1) Insert "or other causative agents" between "herbicides" and the comma on: page 1, line 17; page 2, line 14; and page 3, lines 12, 21, and 24.
- (2) Insert "or any other causative agent" between "herbicide" and the comma on page 2, lines 19 and 21, and on page 4, line 4.
- (3) On page 2, strike line 3 and substitute "to a chemical defoliant or herbicide or other causative agent, including Agent Orange;".

The committee amendment was read and was adopted.

Senator Williams offered the following committee amendment to the bill:

Amend the House Engrossment of **H.B. 2129** as follows:

(1) On page 2, lines 8 and 17, insert the following after "department":
", in consultation and cooperation with a board-certified medical toxicologist,".

(2) On page 3, line 22, insert the following after "with":
"fat tissue biopsies, genetic counseling and".

The committee amendment was read and was adopted.

Senator Williams offered the following committee amendment to the bill:

Amend the House Engrossment of **H.B. 2129** by inserting a new Section 9 to read as follows and renumbering Sections 9 and 10 accordingly:

SECTION 9. TERMINATION OF PROGRAMS AND DUTIES. If the commissioner of health determines that an agency of the federal government is performing the referral and screening functions required by Section 7 of this Act, the commissioner may discontinue any program required by this Act or any duty required of a physician or hospital under this Act.

The committee amendment was read and was adopted.

Senator Williams offered the following committee amendment to the bill:

Amend **H.B. 2129** by Substituting the following for Section 6:

"Section 6. **CLASS ACTION REPRESENTATION BY ATTORNEY GENERAL.** The Attorney General may represent a class of individuals composed of veterans who may have been injured because of contact with chemical defoliants or herbicides, including Agent Orange, in a suit for release of information relating to exposure to such chemicals during military service and for release of individual medical records.

The committee amendment was read and was adopted.

On motion of Senator Williams and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading.

HOUSE BILL 2129 ON THIRD READING

Senator Williams moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **H.B. 2129** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

HOUSE BILL 2123 ON SECOND READING

On motion of Senator Wilson and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 2123, Relating to the rules of practice and procedure of the State Banking Board.

The bill was read second time.

Senator Mauzy offered the following amendment to the bill:

Amend **H.B. 2123** by inserting new Section 2 and 3 to read as follows and renumbering Section 2 as Section 4:

SECTION 2. Article 15, Chapter 1, The Texas Banking Code of 1943, as amended (Article 342-115, Vernon's Texas Civil Statutes), is amended by adding a new Subsection 6 to read as follows:

6. (a) It is unlawful for a person to make or offer to make a contribution as defined by Section 237, Texas Election Code, as amended (Article 14.01, Vernon's Texas Election Code) to a member of the Board if the person or the person's spouse:

(1) is a director, officer, employee or paid counsel of, or consultant to, a corporation or other business entity subject to the Board's jurisdiction;

(2) is required to register as a lobbyist under Chapter 422, Acts of the 63rd Legislature, Regular Session, 1973, as amended (Article 6252-9c, Vernon's Texas Civil Statutes) to lobby on behalf of a corporation or other business entity subject to the Board's jurisdiction; or

(3) owns more than ten percent of the shares of stock of a corporation or other business entity subject to the Board's jurisdiction.

(b) It is unlawful for a political committee established, administered, or controlled by a corporation or other business entity subject to the Board's jurisdiction to make or offer to make a contribution as defined by Section 237, Texas Election Code, as amended (Article 14.01, Vernon's Texas Election Code) to a member of the Board.

(c) A member of the Board commits an offense if he intentionally or knowingly accepts a contribution prohibited by this section.

(d) An offense under this section is a Class A misdemeanor.

SECTION 3. Chapter 1, Title 47, Revised Civil Statutes of Texas, 1925, as amended, is amended by adding Article 2525b to read as follows:

ART. 2525b. (a) It is unlawful for a person to make or offer to make a contribution as defined by Section 237, Texas Election Code, as amended (Article 14.01, Vernon's Texas Election Code) to a member of the Board if the person or the person's spouse:

(1) is a director, officer, employee or paid counsel of, or consultant to, a corporation or other business entity subject to the Board's jurisdiction;

(2) is required to register as a lobbyist under Chapter 422, Acts of the 63rd Legislature, Regular Session, 1973, as amended (Article 6252-9c, Vernon's Texas Civil Statutes) to lobby on behalf of a corporation or other business entity subject to the Board's jurisdiction; or

(3) owns more than ten percent of the shares of stock of a corporation or other business entity subject to the Board's jurisdiction.

(b) It is unlawful for a political committee established, administered, or controlled by a corporation or other business entity subject to the Board's jurisdiction to make or offer to make a contribution as defined by Section 237, Texas Election Code, as amended (Article 14.01, Vernon's Texas Election Code) to a member of the Board.

(c) A member of the Board commits an offense if he intentionally or knowingly accepts a contribution prohibited by this Section.

(d) An offense under this section is a Class A misdemeanor.

The amendment was read and was adopted.

On motion of Senator Wilson and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading.

HOUSE BILL 2123 ON THIRD READING

Senator Wilson moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **H.B. 2123** be placed on its third reading and final passage.

(President in Chair)

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

CONFERENCE COMMITTEE APPOINTED ON SENATE BILL 127

The President asked if there were any motions to instruct the Conference Committee on **S.B. 127** before appointment.

There were no motions offered.

The President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Meier, Chairman; McKnight, Brooks, Doggett, Brown.

HOUSE BILL 1957 ON THIRD READING

Senator Meier asked unanimous consent to suspend the regular order of business to take up for consideration at this time on its third reading and final passage:

H.B. 1957, Amending the Texas Banking Code relating to federal reserve membership of state banks, extending the supervisory authority of the Banking Commissioner, and declaring an emergency.

There was objection.

Senator Meier then moved to suspend the regular order of business and take up **H.B. 1957** for consideration at this time.

The motion prevailed by the following vote: Yeas 26, Nays 5.

Yeas: Andujar, Blake, Brooks, Brown, Caperton, Farabee, Glasgow, Harris, Howard, Jones, Leedom, McKnight, Meier, Mengden, Ogg, Parker, Richards, Santiesteban, Sarpalius, Traeger, Travis, Truan, Uribe, Vale, Williams, Wilson.

Nays: Doggett, Kothmann, Mauzy, Short, Snelson.

The bill was read third time and was passed.

RECORD OF VOTES

Senators Doggett, Mauzy, Kothmann, Short, Snelson and Traeger asked to be recorded as voting "Nay" on the final passage of the bill.

COMMITTEE SUBSTITUTE HOUSE BILL 1115 ON SECOND READING

On motion of Senator Ogg and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

C.S.H.B. 1115, Relating to firemen's and policemen's civil service; establishing a grievance procedure.

The bill was read second time and was passed to third reading.

COMMITTEE SUBSTITUTE HOUSE BILL 1115 ON THIRD READING

Senator Ogg moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **C.S.H.B. 1115** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

Question - Shall the bill be read third time and finally passed?

GUESTS PRESENTED

The Senate welcomed Senator and Mrs. A. M. Aikin, Jr.

Senator Aikin, Dean Emeritus, addressed the Senate, expressing his devotion to the Senate and recalling the many years he served as a Senator from the First Senatorial District.

RECESS

On motion of Senator Mauzy the Senate at 12:01 o'clock p.m. took recess until 2:00 o'clock p.m. today.

AFTER RECESS

The Senate met at 2:00 o'clock p.m. and was called to order by the President.

COMMITTEE SUBSTITUTE HOUSE BILL 1115 ON THIRD READING

The Senate resumed consideration of **C.S.H.B. 1115** on its third reading and final passage.

Question - Shall the bill be read third time and finally passed?

The bill was read third time and was passed.

SENATE RESOLUTION 758

Senator Howard offered the following resolution:

WHEREAS, We are honored today to have as a visitor in the Senate, GUALBERTO ROCCHI, of Milan and Portofino, Italy, renowned international sculptor who has recently completed the bust of A. M. AIKIN, Distinguished Dean Emeritus of the Texas Senate and

WHEREAS, We desire to welcome this distinguished visitor to the Capitol Building and Capital City; Now, therefore be it

RESOLVED, That his presence be recognized by the Senate of Texas and that he be extended the official welcome of the Senate.

The resolution was read and was adopted.

SENATE CONCURRENT RESOLUTION 130

Senator Jones offered the following resolution:

WHEREAS, House Bill 1465 has passed the Senate with amendments and is awaiting consideration of the amendments by the House; and

WHEREAS, Further consideration of the bill by the Senate is necessary; now, therefore, be it

RESOLVED by the Senate of the State of Texas, the House of Representatives concurring, That the Chief Clerk of the House be authorized to return House Bill 1465 to the Senate for further consideration.

The resolution was read.

On motion of Senator Jones and by unanimous consent, the resolution was considered immediately and was adopted.

HOUSE BILL 354 ON SECOND READING

On motion of Senator Jones and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 354, Relating to school-community guidance centers. (Submitted by Governor as an emergency)

The bill was read second time.

Senator Jones offered the following amendment to the bill:

Amend **H.B. 354** by adding a new Section 2 as follows and renumbering Section 2 as Section 3 and Section 3 as Section 4:

Sec. 16.102. Education Program Personnel.

(g) A district's total personnel units, as adjusted, shall be reduced by an amount equal to one-half of the sum of the personnel unit values for vocational personnel allocated to the district under the provisions of Section 16.103 of this chapter, by an amount equal to one-half of the sum of the personnel unit values for school-community guidance center personnel allocated to the district under the provisions of Section 16.403 of this chapter, and by an amount equal to

[~~one-fourth~~] .275 of the sum of the personnel unit values for special education personnel allocated to the district under the provisions of Section 16.104 of this code.

The amendment was read and was adopted.

On motion of Senator Jones and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading.

HOUSE BILL 354 ON THIRD READING

Senator Jones moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **H.B. 354** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 25, Nays 1.

Yeas: Blake, Brooks, Brown, Caperton, Doggett, Farabee, Glasgow, Harris, Howard, Jones, Kothmann, Leedom, Mauzy, McKnight, Meier, Ogg, Parker, Santiesteban, Sarpalius, Short, Snelson, Traeger, Vale, Williams, Wilson.

Nays: Travis.

Absent: Andujar, Mengden, Richards, Truan, Uribe.

The bill was read third time and was passed.

RECORD OF VOTE

Senator Travis asked to be recorded as voting "Nay" on the final passage of the bill.

HOUSE BILL 1559 ON SECOND READING

On motion of Senator Doggett and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 1559, Relating to payment of social security contributions for state employees.

(Senator Wilson in Chair)

The bill was read second time and was passed to third reading.

HOUSE BILL 1559 ON THIRD READING

Senator Doggett moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **H.B. 1559** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

**VOTE ON FINAL PASSAGE OF
HOUSE BILL 354 RECONSIDERED**

On motion of Senator Jones and by unanimous consent, the vote by which **H.B. 354** was finally passed was reconsidered.

Question - Shall **H.B. 354** be finally passed?

Senator Jones offered the following amendment to the bill:

Amend **H.B. 354** by adding a subsection (b) to Sec. 16.404 reads as follows:

Sec. 16.404(a). **OPERATING COSTS.** The cost of operating an approved school-community guidance center [~~pilot program~~] shall be borne by the state and each participating district on the same percentage basis that applies to financing the Foundation School Program within the district. The state's share of the cost shall be paid from funds appropriated for that purpose [~~the Foundation School Program Fund~~]. While in attendance at a school-community guidance center, a student may not be counted in the average daily attendance of the school district for other Foundation School Program purposes.

(b) Should the appropriation in any biennium be insufficient to fully fund the Act, the State Board of Education shall establish criteria in addition to those provided herein for selecting districts to be funded on a need basis. The Commissioner shall use these criteria to determine annually the districts to be authorized to receive funds for operating school-community guidance centers.

The amendment was read and was adopted by unanimous consent.

On motion of Senator Jones and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was again finally passed.

RECORD OF VOTE

Senator Travis asked to be recorded as voting "Nay" on the final passage of the bill.

COMMITTEE SUBSTITUTE HOUSE BILL 2350 ON SECOND READING

Senator McKnight moved to suspend the regular order of business to take up for consideration at this time:

C.S.H.B. 2350, Relating to bonds issued for housing in the State of Texas and entities issuing such bonds; amending Chapters 823 and 835, Acts of the 66th Legislature of the State of Texas, Regular Session, 1979; allocating the State ceiling on certain housing bonds; containing other provisions relative to the subject; and declaring an emergency.

(President in Chair)

The motion prevailed by the following vote: Yeas 27, Nays 4.

Yeas: Andujar, Blake, Brooks, Brown, Caperton, Doggett, Farabee, Glasgow, Harris, Jones, Kothmann, Mauzy, McKnight, Meier, Ogg, Parker, Richards, Santiesteban, Sarpalius, Short, Snelson, Traeger, Travis, Truan, Uribe, Vale, Williams.

Nays: Howard, Leedom, Mengden, Wilson.

The bill was read second time and was passed to third reading.

RECORD OF VOTES

Senators Howard and Wilson asked to be recorded as voting "Nay" on the passage of the bill to third reading.

COMMITTEE SUBSTITUTE HOUSE BILL 2350 ON THIRD READING

Senator McKnight moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that C.S.H.B. 2350 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 27, Nays 4.

Yeas: Andujar, Blake, Brooks, Brown, Caperton, Doggett, Farabee, Glasgow, Harris, Jones, Kothmann, Mauzy, McKnight, Meier, Ogg, Parker, Richards, Santiesteban, Sarpalius, Short, Snelson, Traeger, Travis, Truan, Uribe, Vale, Williams.

Nays: Howard, Leedom, Mengden, Wilson.

The bill was read third time and was passed by the following vote: Yeas 27, Nays 4. (Same as previous roll call)

MOTION TO PLACE HOUSE BILL 487 ON SECOND READING

Senator Truan asked unanimous consent to suspend the regular order of business to take up for consideration at this time:

H.B. 487, Relating to agricultural laborers' use of hoes that have short handles.

There was objection.

Senator Truan then moved to suspend the regular order of business and take up **H.B. 487** for consideration at this time.

The motion was lost by the following vote: Yeas 18, Nays 13. (Not receiving two-thirds' vote of Members present)

Yeas: Blake, Brooks, Doggett, Harris, Jones, Kothmann, Mauzy, McKnight, Ogg, Parker, Richards, Santiesteban, Travis, Truan, Uribe, Vale, Williams, Wilson.

Nays: Andujar, Brown, Caperton, Farabee, Glasgow, Howard, Leedom, Meier, Mengden, Sarpalius, Short, Snelson, Traeger.

MESSAGE FROM THE HOUSE

House Chamber
May 27, 1981

HONORABLE W. P. HOBBY
PRESIDENT OF THE SENATE

Sir: I am directed by the House to inform the Senate that the House has passed the following:

The House has granted the request of the Senate for the appointment of a Conference Committee on S.B. 180.

House Conferees: Atkinson, Blanton, Coleman, Peveto, Haley.

The House concurred in Senate amendments to H.B. 910 by record vote of 140 ayes, 0 nays, 2 present-not voting.

Respectfully,

BETTY MURRAY, Chief Clerk
House of Representatives

BILLS AND RESOLUTIONS SIGNED

The President announced the signing in the presence of the Senate, after the caption had been read, the following enrolled bills and resolutions:

S.B. 89	S.B. 536
S.B. 121	S.B. 544
S.B. 152	S.B. 683
S.B. 292	S.B. 745
S.B. 341	S.B. 801
S.B. 372	S.B. 807
S.B. 383	S.B. 823
S.B. 431	S.B. 915
S.B. 471	S.B. 937
S.B. 476	S.B. 988
S.B. 486	S.B. 1215 (Signed subject to
S.B. 531	Sec. 49a, Art. III.
S.C.R. 3	Constitution of State
	of Texas)
H.C.R. 158	H.C.R. 215
H.B. 324	H.B. 903
H.B. 764	H.B. 1421
H.B. 885	H.B. 1685

SENATE RULE 103 SUSPENDED

On motion of Senator Andujar and by unanimous consent, Senate Rule 103 was suspended in order that the Committee on Natural Resources might consider **H.B. 1706** today.

MOTION TO PLACE HOUSE BILL 1565 ON SECOND READING

Senator Doggett asked unanimous consent to suspend the regular order of business to take up for consideration at this time:

H.B. 1565, Relating to student fee advisory committee recommendations to the president of a public institution of higher education.

There was objection.

Senator Doggett then moved to suspend the regular order of business and take up **H.B. 1565** for consideration at this time.

The motion was lost by the following vote: Yeas 19, Nays 12. (Not receiving two-thirds vote of Members present)

Yeas: Brooks, Caperton, Doggett, Farabee, Kothmann, Mauzy, McKnight, Mengden, Ogg, Parker, Santiesteban, Sarpalius, Short, Snelson, Travis, Truan, Uribe, Vale, Williams.

Nays: Andujar, Blake, Brown, Glasgow, Harris, Howard, Jones, Leedom, Meier, Richards, Traeger, Wilson.

**COMMITTEE SUBSTITUTE
HOUSE CONCURRENT RESOLUTION 185 ON SECOND READING**

Senator Snelson moved to suspend the regular order of business to take up for consideration at this time:

C.S.H.C.R. 185, Relating to acquisition of parks.

(Senator Harris in Chair)

The motion prevailed by the following vote: Yeas 26, Nays 5.

Yeas: Andujar, Brooks, Brown, Caperton, Doggett, Farabee, Glasgow, Harris, Howard, Jones, Kothmann, Leedom, Mauzy, Meier, Mengden, Ogg, Parker, Richards, Santiesteban, Sarpalius, Short, Snelson, Travis, Truan, Uribe, Williams.

Nays: Blake, McKnight, Traeger, Vale, Wilson.

The resolution was read second time and was adopted.

RECORD OF VOTES

Senators Blake, McKnight, Wilson, Traeger and Vale asked to be recorded as voting "Nay" on the adoption of the resolution.

(President in Chair)

**COMMITTEE SUBSTITUTE
HOUSE JOINT RESOLUTION 111 ON SECOND READING**

Senator Snelson moved to suspend the regular order of business to take up for consideration at this time:

C.S.H.J.R. 111, Amending the constitution to repeal the state ad valorem tax and to provide for building programs at state institutions of higher education.

(Senator Parker in Chair)

The motion prevailed by the following vote: Yeas 26, Nays 5.

Yeas: Andujar, Blake, Brooks, Brown, Caperton, Farabee, Harris, Howard, Jones, Kothmann, Leedom, Mengden, Ogg, Parker, Richards, Santiesteban, Sarpalius, Short, Snelson, Traeger, Travis, Truan, Uribe, Vale, Williams, Wilson.

Nays: Doggett, Glasgow, Mauzy, McKnight, Meier.

The resolution was read second time.

Senator Snelson offered the following amendment to the resolution:

Amend **C.S.H.J.R. 111** Section 2(e) on page 7, line 9 by placing a comma after the word "maintenance" and adding the language "including purchased utilities" between the words "maintenance" and "of".

The amendment was read.

Senator Caperton offered the following substitute for the pending amendment:

Amend Committee Substitute for **H.J.R. 111** by striking the words "including purchased utilities" in SECTION 2, Section 18 (e), and striking the words "purchased utilities" in SECTION 3, Section 19 (g).

The substitute for the pending amendment was read.

On motion of Senator Caperton and by unanimous consent, the substitute for the pending amendment was withdrawn.

Question recurring on the adoption of the pending amendment, the pending amendment was adopted.

Senator Doggett offered the following amendment to the resolution:

Amend **H.J.R. 111** as follows:

(1) Renumber Sections 5 and 6 as Sections 6 and 7 and insert a new Section 5 to read as follows:

SECTION 5. That Article III, Section 49, of the Texas Constitution be amended to read as follows:

Sec. 49. (a) State debt may not be incurred except as authorized by this constitution.

(b) "State debt" means bonds or other evidences of indebtedness that are secured by the general credit of the State or are to be repaid from taxes, fees, tuition, or other charges of the State, a State senior college or university, or a State agency or institution having statewide jurisdiction. "State debt" does not include bonds or other evidences of indebtedness issued to finance a project if the debt is authorized by law and is payable solely from revenues generated by the project to be financed.

(c) State debt may be authorized by law if approved by a record affirmative two-thirds vote of the membership of each house of the Legislature and submitted to and approved by a majority of the qualified voters of the State voting on the question.

(d) State debt may be authorized by law to refund outstanding State debt. [No debt shall be created by or on behalf of the State, except to supply casual deficiencies of revenue, repel invasion, suppress insurrection, defend the State in war, or pay existing debt, and the debt created to supply deficiencies in the revenue, shall never exceed in the aggregate at any one time two hundred thousand dollars.]

(2) Strike the ballot proposition in the last section of the resolution and substitute: "The constitutional amendment repealing and prohibiting state property taxes, authorizing state debt on the vote of two-thirds of the membership of each house of the legislature and approval by the voters, and providing for the financing of building programs at all state institutions of higher education."

The amendment was read and was adopted.

On motion of Senator Snelson and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The resolution as amended was passed to third reading by the following vote: Yeas 26, Nays 5.

Yeas: Andujar, Blake, Brooks, Brown, Caperton, Farabee, Harris, Howard, Jones, Kothmann, Leedom, Mengden, Ogg, Parker, Richards, Santiesteban, Sarpalius, Short, Snelson, Traeger, Travis, Truan, Uribe, Vale, Williams, Wilson.

Nays: Doggett, Glasgow, Mauzy, McKnight, Meier.

COMMITTEE SUBSTITUTE HOUSE JOINT RESOLUTION 111 ON THIRD READING

Senator Snelson moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days by suspended and that C.S.H.J.R. 111 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 26, Nays 5.

Yeas: Andujar, Blake, Brooks, Brown, Caperton, Farabee, Harris, Howard, Jones, Kothmann, Leedom, Mengden, Ogg, Parker, Richards, Santiesteban, Sarpalius, Short, Snelson, Traeger, Travis, Truan, Uribe, Vale, Williams, Wilson.

Nays: Doggett, Glasgow, Mauzy, McKnight, Meier.

The resolution was read third time and was passed by the following vote: Yeas 26, Nays 5. (Same as previous roll call)

MESSAGE FROM THE HOUSE

House Chamber
May 27, 1981

HONORABLE W. P. HOBBY
PRESIDENT OF THE SENATE

Sir: I am directed by the House to inform the Senate that the House has passed the following:

The House has granted the request of the Senate for the appointment of a Conference Committee on S.B. 127.

House Conferees: Lewis, Chairman; Uher, Maloney, Jones, Nabers.

Respectfully,

BETTY MURRAY, Chief Clerk
House of Representatives

COMMITTEE SUBSTITUTE HOUSE JOINT RESOLUTION 62 ON SECOND READING

Senator Brooks asked unanimous consent to suspend the regular order of business to take up for consideration at this time:

C.S.H.J.R. 62. Proposing a constitutional amendment to authorize the legislature to provide by law for assistance grants, medical care, and services to needy persons.

There was objection.

Senator Brooks then moved to suspend the regular order of business and take up **C.S.H.J.R. 62** for consideration at this time.

The motion prevailed by the following vote: Yeas 23, Nays 8.

Yeas: Andujar, Brooks, Brown, Caperton, Doggett, Farabee, Glasgow, Harris, Jones, Kothmann, Mauzy, McKnight, Ogg, Parker, Santiesteban, Sarpalius, Short, Snelson, Traeger, Truan, Uribe, Vale, Williams.

Nays: Blake, Howard, Leedom, Meier, Mengden, Richards, Travis, Wilson.

The resolution was read second time and was passed to third reading.

RECORD OF VOTES

Senators Blake, Meier, Travis and Wilson asked to be recorded as voting "Nay" on the passage of the resolution to third reading.

**COMMITTEE SUBSTITUTE
HOUSE JOINT RESOLUTION 62 ON THIRD READING**

Senator Brooks moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that C.S.H.J.R. 62 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 25, Nays 6.

Yeas: Andujar, Blake, Brooks, Brown, Caperton, Doggett, Farabee, Glasgow, Harris, Jones, Kothmann, Mauzy, McKnight, Ogg, Parker, Richards, Santiesteban, Sarpalius, Short, Snelson, Traeger, Truan, Uribe, Vale, Williams.

Nays: Howard, Leedom, Meier, Mengden, Travis, Wilson.

The resolution was read third time and was passed by the following vote: Yeas 23, Nays 8.

Yeas: Andujar, Brooks, Caperton, Doggett, Farabee, Glasgow, Harris, Jones, Kothmann, Leedom, Mauzy, McKnight, Ogg, Parker, Santiesteban, Sarpalius, Short, Snelson, Traeger, Truan, Uribe, Vale, Williams.

Nays: Blake, Brown, Howard, Meier, Mengden, Richards, Travis, Wilson.

HOUSE BILL 1884 ON SECOND READING

On motion of Senator Brooks and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 1884, Relating to supplemental appropriations to Texas Southern University.

The bill was read second time and was passed to third reading.

HOUSE BILL 1884 ON THIRD READING

Senator Brooks moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **H.B. 1884** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

WELCOME AND CONGRATULATORY RESOLUTIONS

S.R. 739 - By Doggett: Commending Greg Farman for providing information to, and consulting with, Members of the Texas Legislature.

S.R. 740 - By Doggett: Commending Jeff Bormaster for consulting with, and providing information to, Members of the Texas Legislature.

S.R. 755 - By Truan: Extending congratulations to Mr. and Mrs. Pedro C. Martinez.

S.R. 756 - By Traeger: Extending congratulations to the citizens and civic leaders of Duval County on receiving the 1981 Achievement Award of the National Association of Counties.

S.R. 759 - By Glasgow: Extending welcome to Tyler Jones, "Honorary Page" for the day.

S.R. 760 - By Glasgow: Extending welcome to Dodie Rohre, "Honorary Page" for the day.

ADJOURNMENT

On motion of Senator Mauzy the Senate at 4:21 o'clock p.m. adjourned in memory of Hubert Roussel until 10:00 o'clock a.m. tomorrow.

APPENDIX

Signed by Governor
(May 25, 1981)

H.J.R. 49	
H.B. 270	Effective August 31, 1981
H.B. 271	Effective August 31, 1981
H.B. 375	Effective immediately
H.B. 563	Effective August 31, 1981
H.B. 911	Effective January 1, 1982
H.B. 970	Sec. 1 - immediately
	Sec. 2 - January 1, 1982
H.B. 1107	Effective September 1, 1981
H.B. 1175	Effective immediately
H.B. 1914	Effective immediately
H.B. 1953	Effective immediately
H.B. 1969	Effective August 31, 1981
H.B. 2115	Effective immediately
H.B. 2130	Effective August 31, 1981
H.B. 2232	Effective immediately
S.B. 205	Effective August 31, 1981
S.B. 418	Effective August 31, 1981
S.B. 550	Effective January 1, 1982
S.B. 691	Effective September 1, 1981
S.B. 1033	Effective immediately

Sent to Governor
(May 27, 1981)

S.B. 89	S.B. 536
S.B. 121	S.B. 544
S.B. 152	S.B. 683
S.B. 292	S.B. 745
S.B. 341	S.B. 801
S.B. 372	S.B. 807
S.B. 383	S.B. 823
S.B. 431	S.B. 915